
Section 1: 8-K (8-K)

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

FORM 8-K

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

Date of Report (Date of earliest event reported)
June 20, 2013 (June 14, 2013)



JANUS CAPITAL
Group

Janus Capital Group Inc.

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction
of incorporation)

001-15253
(Commission file
number)

43-1804048
(IRS Employer
Identification Number)

151 DETROIT STREET
DENVER, COLORADO 80206
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code
(303) 333-3863

Not Applicable
(Former name or former address if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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On June 14, 2013, Janus Capital Group Inc. (the “Company”) entered into separate, privately negotiated exchange agreements (the “Exchange Agreements”) pursuant to which the Company agreed to exchange \$110,000,000 in aggregate principal amount of its 3.25% Convertible Senior Notes due 2014 (the “Existing Notes”), for a new series of 0.75% Convertible Senior Notes due 2018 (the “New Notes”) in an aggregate original principal amount of \$116,602,000 (collectively, the “Exchange Transactions”).

In connection with the issuance of the New Notes, the Company entered into a Third Supplemental Indenture, dated as of June 19, 2013 (the “Supplemental Indenture”), between the Company and The Bank of New York Mellon Trust Company, N.A. (as successor to The Chase Manhattan Bank), as trustee (the “Trustee”), relating to an Indenture, dated as of November 6, 2001, between the Company and the Trustee (the “Base Indenture” and, together with the Supplemental Indenture, the “Indenture”). The Indenture provides for the issuance of the New Notes and sets forth the terms of the New Notes.

The New Notes will pay interest semiannually at a rate of 0.75% per annum on January 15 and July 15 of each year, beginning on January 15, 2014 and will be convertible, under certain circumstances, into cash, shares of common stock, par value \$0.01 per share, of the Company (the “Common Stock”), or a combination of cash and shares of Common Stock, at the Company’s election, at an initial conversion rate of 92.0598 shares of Common Stock per \$1,000 principal amount of New Notes, which is equivalent to an initial conversion price of approximately \$10.86 per share of Common Stock, subject to adjustment in certain circumstances including the occurrence of a Fundamental Change (as defined in the Supplemental Indenture). The initial conversion price represents a premium of 25% relative to the closing price of the Company’s Common Stock on the New York Stock Exchange on June 13, 2013, the date of pricing. Shares of Common Stock into which the New Notes are convertible have been reserved for issuance by the Company and will be listed on the New York Stock Exchange. The New Notes will mature on July 15, 2018, unless earlier converted or repurchased. The New Notes will not be redeemable prior to maturity. The Company is required to offer to repurchase the New Notes following a Fundamental Change at a price equal to 100% of the principal amount of the New Notes to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Purchase Date (as defined in the Supplemental Indenture).

The foregoing descriptions of the Base Indenture, the Supplemental Indenture and the form of the Notes are qualified in their entirety by reference to such documents, copies of which are filed herewith as Exhibit 4.1, Exhibit 4.2 and Exhibit 4.3, respectively hereto and are incorporated into this Item 1.01 by reference. The foregoing description of the Exchange Agreements and the transactions contemplated thereby do not purport to be complete and are subject to, and qualified in their entirety by, the full text of such agreements, a form of which is attached as Exhibit 10.1 and incorporated herein by reference.

Convertible Note Hedge Transactions and Warrant Transactions

In connection with the Exchange Transactions, the Company entered into (i) convertible note hedge transactions with respect to the New Notes and (ii) warrant transactions for the Company’s Common Stock, which the Company will have the option to settle in net shares or cash (the “Warrants”). The convertible note hedge transactions are expected to offset the Company’s exposure to any potential dilution and/or cash payments above par value that may be required upon conversion of any New Notes. The exercise price of the Warrants (approximately \$12.60 per share) represented a premium of approximately 45% to the closing price of the Company’s Common Stock on the New York Stock Exchange on June 13, 2013, the date of pricing. The convertible note hedge transactions and the warrant transactions are each separate transactions and are not part of the terms of the New Notes. Holders of the New Notes will not have any rights with respect to the convertible note hedge transactions and the Warrants.

The foregoing description of the convertible note hedge transactions and the warrant transactions do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Bond Hedge and the Warrant, forms of which are attached as Exhibit 10.2 and 10.3 hereto, respectively, and are incorporated herein by reference.

This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.

The information required by Item 2.03 relating to the Base Indenture, the Supplemental Indenture and the form of the New Notes is contained in Item 1.01 of this Current Report on Form 8-K above and is incorporated herein by reference.

ITEM 3.02. UNREGISTERED SALES OF EQUITY SECURITIES

The information included under Item 1.01 of this Current Report on Form 8-K relating to the issuance of New Notes and Warrants is incorporated by reference in this Item 3.02. The Company offered the New Notes to certain holders of the Existing Notes in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the “Securities Act”) and Rule 506 of Regulation D promulgated under the Securities Act. The Company offered and sold the Warrants in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The offers and sales of the New Notes do not involve a public offering, the solicitation of offers for the New Notes was not done by any form of general solicitation or general advertising, and offers for the New Notes were only solicited from persons believed to be “accredited investors” within the meaning of Rule 501 of Regulation D promulgated under the Securities Act and “qualified institutional buyers” within the meaning of Rule 144A promulgated under the Securities Act.

ITEM 8.01. OTHER EVENTS

On June 14, 2013, the Company issued a press release announcing the Exchange Transactions and the pricing of the New Notes. This press release is attached to, and is hereby incorporated by reference in, this Current Report on Form 8-K as Exhibit 99.1.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Senior Indenture dated November 6, 2001 between Janus Capital Group Inc. (formerly known as Stilwell Financial Inc.) and The Bank of New York Trust Company, N.A. (as successor to The Chase Manhattan Bank) (incorporated by reference to Exhibit 4.1 to Janus Capital Group Inc.'s Current Report on Form 8-K filed on November 7, 2001).
4.2	Third Supplemental Indenture, dated June 19, 2013, between Janus Capital Group Inc. and The Bank of New York Mellon Trust Company, N.A.
4.3	Form of 0.75% Convertible Senior Notes due 2018 (included in Exhibit 4.2 hereto).
10.1	Form of Exchange Agreement, dated June 14, 2013.
10.2	Bond Hedge, dated June 14, 2013, between Janus Capital Group Inc. and Royal Bank of Canada.
10.3	Warrant, dated June 14, 2013, between Janus Capital Group Inc. and Royal Bank of Canada.
99.1	Press Release dated June 14, 2013 issued by the Company.

SIGNATURE

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

Date: June 20, 2013

Janus Capital Group Inc.

By: /s/ David W. Grawemeyer
Executive Vice President and
General Counsel

Exhibit Index

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[\(Back To Top\)](#)**Section 2: EX-4.2 (EX-4.2)**

Exhibit 4.2

EXECUTION VERSION

JANUS CAPITAL GROUP INC.

as Issuer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

as Trustee

Third Supplemental Indenture

Dated as of June 19, 2013

to Senior Debt Indenture Dated as
of

November 6, 2001

0.75% Convertible Senior Notes due 2018

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EXHIBITExhibit A *Form of Note*

THIRD SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of June 19, 2013, between Janus Capital Group Inc., a Delaware corporation, and The Bank of New York Mellon Trust Company, N.A. (the “**Trustee**”) as trustee under the Senior Debt Indenture dated as of November 6, 2001, between the Company (formerly known as Stilwell Financial Inc.) and the Trustee (as amended or supplemented from time to time in accordance with the terms thereof, the “**Original Indenture**”).

RECITALS OF THE COMPANY

WHEREAS, the Company executed and delivered the Original Indenture to the Trustee to provide, among other things, for the issuance, from time to time, of the Company’s unsecured Securities, in an unlimited aggregate principal amount, in one or more series to be established by the Company under, and authenticated and delivered as provided in, the Original Indenture;

WHEREAS, Section 901(6) of the Original Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Original Indenture to establish the form and terms of Securities of any series as contemplated by Sections 201 and 301 of the Original Indenture;

WHEREAS, the Board of Directors has duly adopted resolutions authorizing the Company to execute and deliver this Supplemental Indenture;

WHEREAS, pursuant to the terms of the Original Indenture, the Company desires to establish a new series of its Securities to be known as its “0.75% Convertible Senior Notes due 2018” (the “**Notes**”), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Original Indenture and this Supplemental Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note and the Form of Notice of Conversion, Form of Fundamental Change Purchase Notice and Form of Assignment and Transfer contemplated under the terms of the Notes are to be substantially in the forms hereinafter provided; and

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

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

SECTION 1.01 *Scope of Supplemental Indenture.* The changes, modifications and supplements to the Original Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time, and shall not apply to any other Securities that may be issued under the Original Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. The provisions of this Supplemental Indenture shall supersede any corresponding provisions in the Original Indenture.

SECTION 1.02 *Definitions.* For all purposes of the Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article 1 shall have the meanings assigned to them in this Article 1 and include the plural as well as the singular;
- (ii) all words, terms and phrases defined in the Original Indenture (but not otherwise defined herein) shall have the same meanings as in the Original Indenture;
- (iii) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, shall have

the meanings assigned to them in the Trust Indenture Act;

(iv) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of this instrument; and

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

“**Additional Interest**” has the meaning specified in Section 5.02.

“**Additional Notes**” has the meaning specified in Section 2.01.

“**Additional Shares**” has the meaning specified in Section 4.06(a).

“**Agent Members**” has the meaning specified in Section 2.02.

“**Bid Solicitation Agent**” means the Company or such other Person (including the Trustee) as may be appointed, from time to time, by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 4.01(b)(ii). The Company shall initially act as the Bid Solicitation Agent.

“**Board of Directors**” means:

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(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board,

(b) with respect to a partnership, the board of directors or other governing body of the general partner of the partnership;

(c) with respect to a limited liability company, the board of directors or other governing body, and in the absence of same, the manager or board of managers or the managing member or members or any controlling committee thereof; and

(d) with respect to any other Person, the board or committee of such Person serving in a similar function.

“**Business Day**” means, solely for purposes of this Supplemental Indenture, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or to be closed.

“**Capital Stock**” means :

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity that is not a corporation, any and all shares, interest, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“**Cash Settlement**” has the meaning specified in Section 4.03(a).

“**Cash Settlement Averaging Period**” with respect to any Note means the 25 consecutive Trading Day period beginning on, and including, the third Trading Day immediately following the related Conversion Date; *provided* that with respect to any Conversion Date occurring during the period beginning on, and including, June 4, 2018, and ending at the close of business on the Business Day immediately prior to the Stated Maturity, the “**Cash Settlement Averaging Period**” means the 25 consecutive Trading Days beginning on, and including, the 27th Scheduled Trading Day prior to the Stated Maturity.

“**Clause A Distribution**” has the meaning specified in Section 4.04(c).

“**Clause B Distribution**” has the meaning specified in Section 4.04(c).

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“**Clause C Distribution**” has the meaning specified in Section 4.04(c).

“**close of business**” means 5:00 p.m. (New York City time).

“**Combination Settlement**” has the meaning specified in Section 4.03(a).

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Stock**” means the common stock of the Company, par value \$.01 per share, at the date of this Supplemental Indenture, or such other Reference Property into which the Company’s common stock is changed pursuant to Section 4.07.

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Notes may be presented for conversion. The Trustee shall initially be the Conversion Agent.

“**Conversion Date**” has the meaning specified in Section 4.02(b).

“**Conversion Notice**” has the meaning specified in Section 4.02(b)(i).

“**Conversion Obligation**” has the meaning specified in Section 4.01(a).

“**Conversion Price**” means, in respect of each Note, as of any date, \$1,000, *divided by* the Conversion Rate as of such date.

“**Conversion Rate**” means, initially, 92.0598 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as set forth herein.

“**Custodian**” means the Trustee, as custodian with respect to the Notes (so long as the Notes constitute Global Notes), or any successor entity.

“**Daily Conversion Value**” means, for each of the 25 consecutive Trading Days during the applicable Cash Settlement Averaging Period, one-twenty-fifth (1/25th) of the product of (a) the applicable Conversion Rate and (b) the Daily VWAP of the Common Stock on such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by* 25.

“**Daily Settlement Amount**,” for each of the 25 consecutive Trading Days during the Cash Settlement Averaging Period, shall consist of:

- (a) cash equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value; and

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- (b) if the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means, for each of the 25 consecutive Trading Days during the applicable Cash Settlement Averaging Period, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “JNS <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after hours trading or any other trading outside of the regular trading session trading hours.

“**Defaulted Amounts**” has the meaning specified in Section 5.05.

“**Depository**” or “**Depositary**” shall initially be The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “**Depository**” shall mean such successor Depository.

“**Distributed Property**” has the meaning specified in Section 4.04(c).

“**Effective Date**” has the meaning specified in Section 4.06(c).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Ex-Dividend Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

“**First Supplemental Indenture**” has the meaning specified in Section 9.12.

“**Form of Assignment and Transfer**” shall mean the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Purchase Notice**” shall mean the “Form of Fundamental Change Purchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Notice of Conversion**” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

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(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries and its and their employee benefit plans, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s Common Equity representing more than 50% of the voting power of the Company’s Common Equity, for the avoidance of doubt, such beneficial ownership arises as a result of a revocable proxy delivered in response to a public proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and provided for the avoidance of doubt that no person or group shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or group until such tendered securities are accepted for purchase or exchange under such offer);

(b) consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets or (ii) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Subsidiaries; *provided, however*, that a transaction where the holders of all classes of the Company’s Common Equity immediately prior to such transaction that is a share exchange, consolidation or merger own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such event shall not be a Fundamental Change;

(c) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Notes) ceases to be listed on at least one of the following: The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market (or any of their respective successors).

Notwithstanding the foregoing, a Fundamental Change as a result of clause (a), (b) or (d) shall not be deemed to have occurred in connection with any transaction or transactions described in clause (a) or (b) pursuant to which at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares, in connection with such transaction or transactions consists of shares of Publicly Traded Securities and as a result of this transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares (subject to the provisions set forth under Section 4.03). A transaction that is described in both clause (a) and clause (b) above shall be treated, solely for the purposes of the immediately preceding sentence, as if it were a transaction described solely in clause (b) above.

“**Fundamental Change Company Notice**” has the meaning specified in Section 3.01(b).

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“**Fundamental Change Purchase Date**” has the meaning specified in Section 3.01(a).

“**Fundamental Change Purchase Notice**” has the meaning specified in Section 3.01(a)(i).

“**Fundamental Change Purchase Price**” has the meaning specified in Section 3.01(a).

“**Global Note**” means any Note that is a Registered Security in global form.

“**Indenture**” means the Original Indenture, as originally executed and as supplemented from time to time by one or more indentures supplemental thereto, including this Supplemental Indenture, entered into pursuant to the applicable provisions of the Indenture, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern the Original Indenture, this Supplemental Indenture and any other such supplemental indenture, respectively, subject to Section 9.12.

“**Initial Dividend Threshold**” has the meaning specified in Section 4.04(d).

“**Initial Notes**” has the meaning specified in Section 2.01.

“Interest Payment Date” means, with respect to the payment of interest on the Notes, each January 15 and July 15 of each year.

“Last Reported Sale Price” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the **“Last Reported Sale Price”** shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the **“Last Reported Sale Price”** shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“Make-Whole Fundamental Change” means any transaction or event that constitutes a Fundamental Change as defined in clause (a), (b) or (d) of such definition (and determined after giving effect to any exceptions or exclusions to such definition, including without limitation the first full paragraph immediately following clause (d) of the definition thereof, but without regard to the *proviso* in clause (b) of the definition thereof). Two or more such related events shall only constitute a single Make Whole Fundamental Change.

“Market Disruption Event” means (i) for purposes of determining amounts due upon conversion pursuant to Section 4.03, (x) a failure by the primary United States national or regional securities exchange or market on which the Common Stock is listed or admitted to trading to open for trading during its regular trading session or (y) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock

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for more than a one-half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock and (ii) for all other purposes, if the Common Stock is listed for trading on The New York Stock Exchange or listed on another U.S. national or regional securities exchange, the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

“Measurement Period” has the meaning specified in Section 4.01(b)(ii).

“Merger Common Stock” has the meaning specified in Section 4.07(c)(i).

“Merger Event” has the meaning specified in Section 4.07(a).

“Merger Valuation Percentage” has the meaning specified in Section 4.07(d)(i).

“Merger Valuation Period” has the meaning specified in Section 4.07(d)(ii).

“Note” or **“Notes”** has the meaning specified in the fourth paragraph of the recitals of this Supplemental Indenture, and shall include any Additional Notes issued pursuant to Section 2.01.

“open of business” means 9:00 a.m. (New York City time).

“Original Indenture” has the meaning specified in the first paragraph of this Supplemental Indenture.

“Paying Agent” has the meaning set forth in the Original Indenture, which shall initially be the Trustee, and shall be the Person authorized by the Company to pay the principal amount of, interest on, or Fundamental Change Purchase Price of, any Notes on behalf of the Company.

“Physical Notes” means certificated Notes that are not in global form and are Registered Securities issued in denominations of \$1,000 principal amount and multiples thereof.

“Physical Settlement” has the meaning specified in Section 4.03(a).

“Place of Payment” means, for purposes of the Notes, New York, New York.

“Publicly Traded Securities” means, in respect of a transaction or transactions described in clause (a) or (b) of the definition of Fundamental Change, shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market (or any or their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions.

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“**Record Date**” has the meaning specified in Section 4.04(h).

“**Regular Record Date**” means, with respect to the payment of interest on the Notes, the January 1 (whether or not a Business Day) immediately preceding an Interest Payment Date on January 15 and the July 1 (whether or not a Business Day) immediately preceding an Interest Payment Date on July 15.

“**Reference Property**” has the meaning specified in Section 4.07(a).

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the principal United States national securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, “**Scheduled Trading Day**” means a Business Day.

“**Second Supplemental Indenture**” has the meaning specified in Section 9.12.

“**Settlement Amount**” has the meaning specified in Section 4.03(a)(iv).

“**Settlement Method**” means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

“**Settlement Notice**” has the meaning specified in Section 4.03(a)(iii).

“**Specified Dollar Amount**” means the amount of cash per \$1,000 principal amount of converted Note specified in the Settlement Notice related to such converted Note.

“**Spin-Off**” has the meaning specified in Section 4.04(c).

“**Stated Maturity**” means, with respect to any Note and the payment of the principal amount thereof, July 15, 2018.

“**Stock Price**” has the meaning specified in Section 4.06(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” has the meaning specified in Section 8.01(a).

“**Supplemental Indenture**” has the meaning specified in the first paragraph hereof.

“**Trading Day**” means a day on which (i) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York

Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded and (ii) there is no Market Disruption Event (as defined in clause (ii) of the definition thereof); *provided* that if the Common Stock (or other security for which a closing sale price must be determined) is not so listed or traded, “**Trading Day**” means a Business Day; and *provided, further*, that for purposes of determining amounts due upon conversion pursuant to Section 4.03 only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event (as defined in clause (i) of the definition thereof) and (y) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded, except that if the Common Stock (or other security for which a Daily VWAP must be determined) is not so listed or traded, “**Trading Day**” means a Business Day.

“**Trading Price**” of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$2 million principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that if three bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$2 million principal amount of the Notes from a nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate.

“**Trading Price Condition**” has the meaning specified in Section 4.01(b)(ii).

“**Trigger Event**” has the meaning specified in Section 4.04(c).

“**Trustee**” has the meaning set forth in the first paragraph of this Supplemental Indenture.

“**unit of Reference Property**” has the meaning specified in Section 4.07(a)

“**U.S.**” means the United States of America.

“**Valuation Period**” has the meaning specified in Section 4.04(c).

SECTION 1.03 *References to Interest.* Any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 5.02. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2 THE SECURITIES

SECTION 2.01 *Title and Terms; Payments.* There is hereby established a series of Securities designated the “0.75% Convertible Senior Notes due 2018” initially limited in aggregate principal amount to \$116,602,000, which amount shall be as set forth in a Company Order for the authentication and delivery of Notes pursuant to Section 303 of the Original Indenture.

The principal amount of Notes then Outstanding shall be payable at the Stated Maturity. Interest on the Notes shall accrue at a rate of 0.75% per annum, from June 19, 2013 or from the most recent date on which interest has been paid or duly provided for, until the principal thereof is paid or made available for payment. Interest shall be payable on each Interest Payment Date, beginning on January 15, 2014, to the Person in whose name a Note is registered on the Security Register at the close of business on the Regular Record Date immediately preceding the applicable Interest Payment Date.

The Company may, without the consent of the Holders of the Notes, hereafter issue additional notes (“**Additional Notes**”) under the Indenture with the same terms as the Notes (other than any legends or endorsements thereon) issued on the date of this Supplemental Indenture (the “**Initial Notes**”) other than any differences in CUSIP numbers, in an unlimited aggregate principal amount; *provided* that such Additional Notes must be part of the same issue as the Initial Notes for federal income tax purposes unless the Additional Notes have a separate CUSIP than the Initial Notes. Any such Additional Notes shall constitute a single series together with the Initial Notes for all purposes hereunder, including, without limitation, for purposes of any waivers, supplements or amendments to the Indenture requiring the approval of Holders of the Notes and any offers to purchase the Notes.

The Form of Note shall be substantially as set forth in Exhibit A and the Form of Notice of Conversion, the Form of Fundamental Change Purchase Notice and the Form of Assignment and Transfer shall be substantially as set forth in Attachments 1, 2 and 3, respectively, to Exhibit A, each of which is incorporated into and shall be deemed a part of this Supplemental Indenture, and in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the Securities Act of 1933, as amended, the Exchange Act or the rules of the Commission or any securities exchange or as may, consistently herewith, be determined to be necessary or appropriate by the Officers of the Company executing such Notes, as evidenced by their execution of the Notes.

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of and interest on any Physical Notes at the office or agency designated by the Company for that purpose, unless a Holder timely requests to have such amounts paid by wire transfer in accordance with the final three sentences of this paragraph, in which case the Company shall instead pay such principal of and interest on any Physical Notes by wire transfer in accordance with the transfer instructions provided in such request. The Company has initially designated the Trustee as its Paying Agent and Security Registrar in respect of the Notes and its agency in New York, New York as a place where Notes

may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Security Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Security Registrar for the Notes. Payments on any Physical Notes having a principal amount of at least \$10,000,000 shall be payable, if the Holder of such Physical Notes so requests in accordance with the two immediately succeeding sentences, by wire transfer of immediately available funds to an account specified by the Holder at a bank in New York City, New York. To request payment by wire transfer, the Holder must give appropriate transfer instructions to the Trustee or other Paying Agent (if not the Trustee) at least 15 Business Days before the requested wire payment is due and, in the case of any interest payments, the instructions must be given by the Person who is shown on the Trustee’s records as the Holder of the Physical Note on the applicable Regular Record Date. All applications for payment by wire transfer shall remain in effect unless and until new instructions are given in the manner described in the immediately preceding sentence.

SECTION 2.02 *Book-Entry Provisions for Global Notes.* (a) The Notes initially shall be issued in the form of one or more Global Notes without interest coupons (i) registered in the name of Cede & Co., as nominee of the Depositary and (ii) delivered to the Trustee as custodian for the Depositary.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Supplemental Indenture or the Original Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Note, and Cede & Co., or such other Person designated by the Depository as its nominee, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Note 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 Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(b) Transfers of Global Notes shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Notwithstanding anything to the contrary in Section 305 of the Original Indenture, interests of beneficial owners in a Global Note may be transferred or exchanged, in whole or in part, for Physical Notes, only if: (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as Depository for the Global Notes and a successor Depository is not appointed within 60 days; (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor Depository is not appointed within 60 days; or (iii) an Event of Default with respect to the Notes has occurred and is continuing and such beneficial owner requests that its Notes be issued as Physical Notes, in each case in accordance with the rules and procedures of the Depository. Other than as set forth in this Section 2.02(b), the Notes shall remain in global form as Global Notes.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in the Global Note to beneficial owners pursuant to Section 305 of the Original Indenture, as modified by this Section 2.02, the Security Registrar shall (if one or more Physical Notes are to be issued) reflect on its books and records the date and a decrease in the principal amount of the

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Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Physical Notes of like tenor and amount in accordance with Section 305 of the Original Indenture, as modified by this Section 2.02.

(d) In connection with the transfer of the entire Global Note to beneficial owners pursuant to Section 305 of the Original Indenture, as modified by this Section 2.02, the Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in the Global Note, an equal aggregate principal amount of Physical Notes of authorized denominations and the same tenor.

(e) The Holder of Global Notes may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Supplemental Indenture, Original Indenture or the Notes.

SECTION 2.03 Reporting Requirement. For purposes of Section 703 of the Original Indenture, documents filed by the Company with the Commission via the Commission’s EDGAR system shall be deemed to be filed with the Trustee as of the time such documents are filed via the Commission’s EDGAR system. Delivery of reports, information and documents to the Trustee is for informational purposes only and shall not constitute a representation or warranty as to the accuracy or completeness of the reports, information and documents. The Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates of the Company).

SECTION 2.04 Repurchase and Cancellation. To the extent permitted by law, the Company may repurchase Notes in open-market purchases or negotiated transactions without giving prior notice to Holders. The Company shall surrender any Notes repurchased by the Company to the Trustee for cancellation in accordance with Section 310 of the Original Indenture and any such Notes repurchased by the Company shall be deemed to be no longer Outstanding. Any Notes surrendered for cancellation by the Company shall not be reissued or resold.

ARTICLE 3 FUNDAMENTAL CHANGES AND PURCHASES THEREUPON

SECTION 3.01 Purchase at Option of Holders Upon a Fundamental Change. (a) If a Fundamental Change occurs at any time prior to the Stated Maturity, then each Holder of Notes shall have the right, at such Holder’s option, to require the Company to purchase for cash any or all of such Holder’s Notes, or any portion of the principal amount thereof, that is equal to \$1,000 or an integral multiple of \$1,000, on a date (the “**Fundamental Change Purchase Date**”) specified by the Company that is not less than 20 calendar days or more than 35 calendar days following the date of the Fundamental Change Company Notice, at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but

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excluding, the Fundamental Change Purchase Date (the “**Fundamental Change Purchase Price**”), unless the Fundamental Change Purchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest on the Interest Payment Date to the Holders of record as of the preceding Regular Record Date, and the Fundamental Change Purchase Price shall be equal to 100% of the principal amount of the Notes to be purchased pursuant to this Article 3.

Purchases of Notes under this Section 3.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the “**Fundamental Change Purchase Notice**”) in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository’s procedures for tendering interests in Global Notes, if the Notes are not Physical Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date (the “**Fundamental Change Expiration Time**”); and

(ii) delivery of the Notes, in the case of Physical Notes, to the Paying Agent appointed by the Company (together with all necessary endorsements for transfer), or book-entry transfer of the Notes, in compliance with the procedures and requirements of the Depository, such delivery or transfer being a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor.

The Fundamental Change Purchase Notice in respect of any Notes to be purchased shall state:

- (i) if such Notes are Physical Notes, the certificate numbers of such Notes;
- (ii) the portion of the principal amount of such Notes, which must be \$1,000 or an integral multiple thereof; and
- (iii) that such Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and this Supplemental Indenture;

provided, however, that if such Notes are Global Notes, the Fundamental Change Purchase Notice must also comply with appropriate procedures of the Depository.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.03.

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

(b) On or before the 20th calendar day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of the Notes, the Trustee and the Paying Agent (in the case of any Paying Agent other than the Trustee) a notice (the “**Fundamental Change Company Notice**”) of the occurrence of such Fundamental Change and of the purchase right at the option of the Holders arising as a result thereof. Such notice shall be sent by first class mail or, in the case of any Global Notes, in accordance with the procedures of the Depository for providing notices. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a notice containing the information included therein in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at such time.

Each Fundamental Change Company Notice shall specify:

- (i) the events causing a Fundamental Change;
- (ii) the date of the Fundamental Change;
- (iii) the last date on which a Holder of Notes may exercise the purchase right pursuant to this Article 3;
- (iv) the Fundamental Change Purchase Price;
- (v) the Fundamental Change Purchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the applicable Conversion Rate and any adjustments to the applicable Conversion Rate that will result from the Fundamental Change;
- (viii) if applicable, that the Notes with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with this Supplemental Indenture; and
- (ix) the procedures that Holders must follow to require the Company to purchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the purchase rights of the Holders of Notes or affect the validity of the proceedings for the purchase of the Notes pursuant to this Section 3.01.

(c) Notwithstanding the foregoing, there shall be no purchase of any Notes pursuant to this Section 3.01 if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Purchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the

acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes) and shall deem to be cancelled any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depository, in which case, upon such return or cancellation, as the case may be, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

SECTION 3.02 *Effect of Fundamental Change Purchase Notice.* Upon receipt by the Paying Agent of a Fundamental Change Purchase Notice specified in Section 3.01, the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn in accordance with Section 3.03) thereafter be entitled to receive solely the Fundamental Change Purchase Price in cash with respect to such Note. Such Fundamental Change Purchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on the later of (x) the Fundamental Change Purchase Date with respect to such Note (provided the conditions in Section 3.01 have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01.

SECTION 3.03 *Withdrawal of Fundamental Change Purchase Notice.* A Fundamental Change Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted;
- (ii) if Physical Notes have been issued, the certificate numbers of the withdrawn Notes;
- (iii) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Purchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;
- (iv) the name of the Holder; and
- (v) that the Holder is withdrawing its Fundamental Change

provided, however, that if the Notes are Global Notes, the notice must comply with appropriate procedures of the Depository.

The Paying Agent will promptly return to the respective Holders thereof any Physical Notes with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with the provisions of this Section 3.03.

SECTION 3.04 *Deposit of Fundamental Change Purchase Price.* Prior to 11:00 a.m. (local time in The City of New York) on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate

of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Purchase Price of all the Notes or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. If the Paying Agent holds cash sufficient to pay the Fundamental Change Purchase Price of the Notes for which a Fundamental Change Purchase Notice has been tendered and not withdrawn in accordance with this Supplemental Indenture on the Fundamental Change Purchase Date, then as of such Fundamental Change Purchase Date, (a) such Notes will cease to be Outstanding and interest will cease to accrue thereon (whether or not book-entry transfer of such Notes is made or such Notes have been delivered to the Paying Agent) and (b) all other rights of the Holders in respect thereof will terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery or book-entry transfer of such Notes).

SECTION 3.05 *Notes Purchased in Whole or in Part.* Any Note that is to be purchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires in the case of Physical Notes, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not purchased.

SECTION 3.06 *Covenant to Comply With Applicable Laws Upon Purchase of Notes.* In connection with any offer to purchase Notes under Section 3.01, the Company shall, in each case if required, (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, (ii) if required under the Exchange Act, file a Schedule TO or any other filing required thereunder and (iii) otherwise comply with all federal and state securities laws, in each case, so as to permit the rights and obligations under Section 3.01 to be exercised in the time and in the manner specified in Section 3.01.

SECTION 3.07 *Repayment to the Company.* To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.04 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof that the Company is obligated to purchase as of the Fundamental Change Purchase Date, then, following the Fundamental Change Purchase Date, the Paying Agent shall promptly return any such excess to the Company.

ARTICLE 4 CONVERSION

SECTION 4.01 *Right to Convert.*

(a) Subject to and upon compliance with the provisions of this Article 4, each Holder of Notes shall have the right, at such Holder's option, to convert the principal amount of any such Notes, or any portion of such principal amount equal to \$1,000 or an integral multiple thereof, at the Conversion Rate then in effect (subject to the settlement provisions set forth in

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Section 4.03, the "**Conversion Obligation**") (x) prior to the close of business on the Business Day immediately preceding April 15, 2018, only upon satisfaction of one or more of the conditions described in Section 4.01(b) and (y) on or after April 15, 2018, at any time prior to the close of business on the Business Day immediately preceding the Stated Maturity irrespective of the conditions described in Section 4.01(b).

(b) (i) The Notes may be surrendered for conversion during any calendar quarter commencing after September 30, 2013 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable Conversion Price on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after September 30, 2013 whether the Notes may be surrendered for conversion in accordance with this clause (i) and shall notify the Trustee if the Notes become convertible in accordance with this clause (i).

(ii) The Notes may be surrendered for conversion during the five Business Day period after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder of the Notes in accordance with the procedures set forth in this clause (ii), for each Trading Day of such Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock on such Trading Day and the applicable Conversion Rate (the "**Trading Price Condition**"). The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this clause (ii) and the definition of Trading Price set forth in Section 1.02. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company in accordance with the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price of the Notes in accordance with this clause (ii) unless requested by the Company, and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Notes would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate, at which time the Company shall instruct the Bid Solicitation Agent to determine (or, if the Company is then acting as Bid Solicitation Agent, the Company shall determine) the Trading Price of the Notes beginning on the next Trading Day following the receipt of such evidence and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. If the Company does not so instruct the Bid Solicitation Agent to obtain (or, if the Company is then acting as Bid Solicitation Agent, the Company does not obtain) bids when required, then the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate on each day the Company fails to do so. If the Trading Price Condition has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee). If, at any time

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after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock on such Trading Day and the applicable Conversion Rate, the Company shall so notify the Holders of the Notes, the Trustee and the Conversion Agent.

(iii) If the Company elects to:

(A) issue to all or substantially all holders of its Common Stock rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase shares of its Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such issuance; or

(B) distribute to all or substantially all holders of its Common Stock the Company's assets, debt securities or rights to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day preceding the date of announcement for such distribution,

then, in each case, the Company shall notify the Holders of the Notes at least 35 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, Holders may surrender Notes for conversion at any time until the earlier of (x) the close of business on the Business Day immediately preceding such Ex-Dividend Date and (y) the Company's announcement that such issuance or distribution will not take place, even if the Notes are not otherwise convertible at such time.

(iv) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs, regardless of whether a Holder has the right to require the Company to purchase the Notes pursuant to Article 3, or if the Company is a party to a consolidation, merger, binding share exchange, sale, conveyance, transfer or lease of all or substantially all of its assets, pursuant to which the Common Stock would be converted into cash, securities or other assets, the Notes may be surrendered for conversion at any time from or after the date which is 35 Scheduled Trading Days prior to the anticipated effective date of the transaction (or, if later, the Business Day after the Company gives notice of such transaction) until 35 Trading Days after the actual effective date of such transaction or, if such transaction also constitutes a Fundamental Change, until the related Fundamental Change Purchase Date. The Company shall notify Holders and the Trustee (i) as promptly as practicable following the date the Company publicly announces such transaction but in no event less than 35 Scheduled Trading Days prior to the anticipated effective date of such transaction or (ii) if the Company does not have knowledge of such transaction at least 35 Scheduled Trading Days prior to the anticipated effective date of such transaction, within one Business Day of the date upon

which the Company receives notice, or otherwise becomes aware, of such transaction but in no event later than the actual effective date of such transaction.

SECTION 4.02 *Conversion Procedures.*

(a) Each Note shall be convertible at the office of the Conversion Agent and, if applicable, in accordance with the procedures of the Depository.

(b) In order to exercise the conversion privilege with respect to a beneficial interest in a Global Note, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Conversion Agent, and pay the funds, if any, required by Section 4.03(d) and any taxes or duties if required pursuant to Section 4.08, and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depository. In order to exercise the conversion privilege with respect to any Physical Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

- (i) complete and manually sign a conversion notice in the form set forth in the Form of Notice of Conversion (the "**Conversion Notice**") or a facsimile of the Conversion Notice;
- (ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;
- (iii) if required, furnish appropriate endorsements and transfer documents,
- (iv) if required, make any payment required under Section 4.03(d); and
- (v) if required, pay all transfer or similar taxes as set forth in Section 4.08.

The date on which the Holder satisfies all of the applicable requirements set forth above shall be the "**Conversion Date**" with respect to such Notes surrendered for conversion. The Conversion Agent will, as promptly as possible, and in any event within one Business Day of the receipt thereof, provide the Company with notice of any conversion by a Holder of the Notes.

(c) Each Conversion Notice shall state the name or names (with address or addresses) in which any certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. All such Notes surrendered for conversion shall, unless the shares of Common Stock issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or its duly authorized attorney.

(d) In case any Notes of a denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge, new Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion on the relevant Conversion Date; *provided, however*, that the Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the related Cash Settlement Averaging Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon the Conversion Date of Notes surrendered for conversion, such Person shall no longer be a Holder with respect to such Notes.

(e) Upon the conversion of a beneficial interest in Global Notes, the Conversion Agent shall make a notation on such Global Notes as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) Notwithstanding the foregoing, a Note in respect of which a Holder has delivered a Fundamental Change Purchase Notice exercising such Holder's option to require the Company to purchase such Note may be converted only if such Fundamental Change Purchase Notice is withdrawn in accordance with Article 3 prior to the close of business on the Business Day prior to the relevant Fundamental Change Purchase Date.

SECTION 4.03 *Settlement Upon Conversion.* (a) Subject to this Section 4.03 and Section 4.06(b), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to converting Holders, in respect of each \$1,000 principal amount of Notes being converted, either cash ("**Cash Settlement**"), shares of Common Stock, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with clause (e) of this Section 4.03 ("**Physical Settlement**") or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with clause (e) of this Section 4.03 ("**Combination Settlement**"), at its election, as set forth in this Section 4.03.

(i) All conversions occurring on or after April 15, 2018 shall be settled using the same Settlement Method.

(ii) Prior to April 15, 2018, the Company shall use the same Settlement Method for all conversions occurring on any given Conversion Date. Except for any conversion with a Conversion Date that occurs on or after April 15, 2018, the Company shall not have any obligation to use the same Settlement Method with respect to conversions with Conversion Dates that occur on different Trading Days.

(iii) If, in respect of any Conversion Date (or the period beginning on, but excluding, April 15, 2018 and ending on, and including, the Business Day immediately preceding the Stated Maturity, as the case may be), the Company elects to deliver a notice (a "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company, through the Trustee, shall deliver such Settlement Notice to converting Holders no later than the second

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Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring on or after April 15, 2018, no later than April 15, 2018).

If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount shall be equal to \$1,000. Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount in such Settlement Notice, the Specified Dollar Amount shall be deemed to be equal to \$1,000.

(iv) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder a number of shares of Common Stock equal to the product of (1) the aggregate principal amount of Notes to be converted, *divided by* \$1,000, *and* (2) the applicable Conversion Rate;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each \$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 25 consecutive Trading Days during the related Cash Settlement Averaging Period; and

(C) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement (or is deemed to have so elected), the Company shall pay and deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, an amount of cash and shares of Common Stock equal to the sum of the Daily Settlement Amounts for each of the 25 consecutive Trading Days during the related Cash Settlement Averaging Period.

(v) The Company shall pay or deliver, as the case may be, the consideration due in respect of its Conversion Obligation no later than the third Business Day immediately following the relevant Conversion Date, if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, and no later than the third Business Day immediately following the last Trading Day of the Cash Settlement Averaging Period, in the case of an election to satisfy its Conversion Obligation in respect of such conversion by any other Settlement Method.

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(b) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Cash Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of any fractional share, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agents (if other than the Trustee) shall have no responsibility for any such determination.

(c) Subject to Section 4.03(d), upon conversion, Holders shall not receive any separate cash payment for accrued and unpaid interest, if any.

(d) Upon the conversion of any Notes, the Holder of such Notes shall not be entitled to receive any separate cash payment for accrued and unpaid interest, if any, except to the extent specified below. The Company's delivery to the Holder of cash, shares of Common Stock, or a combination of cash and shares of Common Stock, together with any cash payment for any fractional share of Common Stock, if applicable, into which a Note is convertible shall be deemed to satisfy in full the Company's obligation to pay the principal amount of the Notes so converted and accrued and unpaid interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest shall be deemed to be paid first out of any cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on any Regular Record Date and prior to the open of business on the immediately following Interest Payment Date, Holders of such Notes at the close of business on such Regular Record Date shall receive the interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment need be made (i) for conversions following the Regular Record Date immediately preceding the Stated Maturity, (ii) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date, or (iii) to the extent of any Defaulted Interest, if any Defaulted Interest exists at the time of conversion with respect to such Note.

(e) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of any fractional share of Common Stock issuable upon conversion based on the Daily VWAP of the Common Stock on the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP on the last Trading Day of the relevant Cash Settlement Averaging Date (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Cash Settlement Averaging Period and any fractional share remaining after such computation shall be

paid in cash. In addition, if more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered.

SECTION 4.04 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustment to the Conversion Rate if Holders of the Notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 4.04, without having to convert their Notes, as if such Holders held a number of shares of Common Stock equal to the Conversion Rate in effect for such Notes immediately prior to the Ex-Dividend Date for such event, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of its Common Stock as a dividend or distribution on shares of its Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;

CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or such effective date;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or such effective date; and

OS₁ = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 4.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such

dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, or any share split or combination of the type described in this Section 4.04(a) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would

then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) If the Company issues to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 4.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive

Trading Day period ending on the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

- (c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of its or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding
- (i) dividends, distributions, rights, options or warrants as to which an adjustment was effected pursuant to Section 4.04(a) or Section 4.04(b);
 - (ii) dividends or distributions paid exclusively in cash; and
 - (iii) Spin-Offs as to which the provisions set forth below in this Section 4.04(c) shall apply;

(any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR₁ = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property distributed with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

If the Board of Directors determines the “FMV” (as defined above) of any distribution for purposes of this Section 4.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater

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than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of Notes shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of the Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

Any increase made under the above portion of Section 4.04(c) shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared.

With respect to an adjustment pursuant to this Section 4.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;
- CR₁ = the Conversion Rate in effect immediately after the end of the Valuation Period;
- FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined for purposes of the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”); and
- MP₀ = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur on the last day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period references in the portion of this Section 4.04(c) related to Spin-Offs to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the applicable Conversion Rate.

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For the purposes of this Section 4.04(c) (and subject in all respects to Section 4.12), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling them to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a “**Trigger Event**”): (1) are deemed to be transferred with such shares of Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 4.04(c), (and no adjustment to the Conversion Rate under this Section 4.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Supplemental Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different

securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.04(c) was made, (1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any Holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of this Section 4.04(c) and subsections (a) and (b) of this Section 4.04, any dividend or distribution to which this Section 4.04(c) applies which also includes one or both of:

- (A) a dividend or distribution of shares of Common Stock to which Section 4.04(a) applies (the “**Clause A Distribution**”);
- (B) a dividend or distribution of rights, options or warrants to which Section 4.04(b) applies (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.04(c) applies (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 4.04 (c) with respect thereto shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C

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Distribution and any Conversion Rate adjustment required by Section 4.04(a) and Section 4.04(b) with respect thereto shall then be made, except that, if determined by the Company, (I) the “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the open of business on such Ex-Dividend Date or such effective date” within the meaning of Section 4.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend Date” within the meaning of Section 4.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, other than a regular, quarterly cash dividend that does not exceed \$0.07 per share (the “**Initial Dividend Threshold**”), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0 - T}{SP_0 - C}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
- CR₁ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
- SP₀ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution;
- T = the Initial Dividend Threshold; *provided* that if the dividend or distribution is not a regular cash dividend, the Initial Dividend Threshold shall be deemed to be zero; and
- C = the amount in cash per share that the Company distributes to holders of the Common Stock.

The Initial Dividend Threshold shall be adjusted in a manner inversely proportional to adjustments to the Conversion Rate; *provided* that no adjustment shall be made to the Initial Dividend Threshold for any adjustment made to the Conversion Rate pursuant to this Section 4.04(d).

Any increase pursuant to this Section 4.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder shall receive, for each \$1,000

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principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

If such dividend or distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the 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, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender offer or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer);
- OS₁ = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and
- SP₁ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 4.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next

succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 4.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and the Conversion Date in determining the applicable Conversion Rate.

(f) The Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to this Section 4.04(f), the Company shall mail to Holders of record of the Notes a notice of the increase at least 10 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(g) The Company may (but shall not be required to) increase the Conversion Rate, in addition to any adjustments pursuant to Section 4.04(a), 4.04(b), 4.04(c), 4.04(d), 4.04(e) or 4.04(f), if the Board of Directors considers such increase to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

(h) Notwithstanding this Section 4.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the Common Shares as of the related Conversion Date as described under Section 4.02(d) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 4.04, the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of shares on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment. The term “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property,

the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

(i) All calculations under this Article 4 shall be made by the Company and shall be made to the nearest cent (including, in the case of any adjustment to the Conversion Rate, the resulting adjustment to the Conversion Price) or to the nearest one ten-thousandth of a share. No adjustment shall be required to be made for the Company's issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or rights to purchase shares of Common Stock or such convertible or exchangeable securities, other than as provided in this Section 4.04 and in Section 4.12.

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(j) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder of the Notes. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(k) For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(l) Notwithstanding anything to the contrary in this Article 4, no adjustment to the Conversion Rate shall be made:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this Section 4.04(l) and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock; or

(v) for accrued and unpaid interest on the Notes, if any.

SECTION 4.05 *Certain Other Adjustments.* Whenever any provision of the Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including any Cash Settlement Averaging Period), the Company shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

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SECTION 4.06 *Adjustment to Shares Delivered Upon Conversion Upon a Make-Whole Fundamental Change.* (a) If a Make-Whole Fundamental Change occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall, under certain circumstances, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant Conversion Notice is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Purchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change).

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 4.03; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property is comprised entirely of cash, then, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the Make-Whole Fundamental Change and shall be deemed to be an amount equal to the applicable Conversion Rate (including any adjustment for Additional Shares) *multiplied by* such Stock Price. In such event, the Conversion Obligation deliverable by the Company shall be determined and paid to Holders in cash on the third Business Day following the Conversion Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate will be increased shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the price (the “**Stock Price**”) paid (or deemed paid) per share of the Common Stock in the Make-Whole Fundamental Change. If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, during such five consecutive Trading Day period.

The exact Stock Prices and Effective Dates may not be set forth in the table in Schedule A, in which case:

(i) If the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall

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be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 360-day year.

(ii) If the Stock Price is greater than \$25.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (d) below), no additional shares will be issued upon conversion.

(iii) If the Stock Price is less than \$8.69 per share (subject to adjustments in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (d) below), no additional shares will be issued upon conversion.

Notwithstanding the foregoing, in no event shall the total number of shares of Common Stock issuable upon conversion exceed 115.0747 per \$1,000 principal amount of Notes, subject to adjustments in the same manner as the Conversion Rate as set forth in Section 4.04.

(d) The Stock Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 4.04.

(e) The Company shall notify the Holders of Notes of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five business days after such Effective Date.

SECTION 4.07 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

(ii) any consolidation, merger or combination involving the Company;

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(iv) any statutory share exchange;

in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “**Merger Event**”), then, at and after the effective time of such Merger Event, the

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right to convert each \$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate prior to such Merger Event would have owned or been entitled to receive (the “**Reference Property**”, with each “**unit of Reference Property**” meaning the type and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing for such change in the right to convert each \$1,000 principal amount of Notes; *provided, however*, that at and after the effective time of the Merger Event (i) the Company shall continue to have the right to determine the form of consideration to be paid and delivered, as the case may be, upon conversion of the Notes in accordance with Section 4.03 and (ii) (x) any

amount payable in cash upon conversion of the Notes in accordance with Section 4.03 shall continue to be payable in cash, (y) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 4.03 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Merger Event and (z) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If, as a result of the Merger Event, each share of Common Stock is converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (x) the Reference Property into which the Notes will be convertible will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election, and (y) the unit of Reference Property for purposes of the foregoing sentence shall refer to the consideration referred to in clause (x) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

The Company shall not become a party to any such Merger Event unless its terms are consistent with this Section 4.07. Such supplemental indenture described in the second immediately preceding paragraph shall provide for adjustments which shall be as nearly equivalent to the adjustments provided for in this Article 4 in the judgment of the Board of Directors or the board of directors of the successor Person. If, in the case of any such Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such supplemental indenture shall also be executed by such other Person.

(b) The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Notes maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 4.07 shall similarly apply to successive Merger Events. If this Section 4.07 applies to any Merger Event, Section 4.04 shall not apply.

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(c) In connection with any Merger Event, the Initial Dividend Threshold shall be subject to adjustment as described in clause (i), clause (ii) or clause (iii) below, as the case may be.

(i) In the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to the second paragraph of subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of shares of common stock (the "**Merger Common Stock**"), the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to (x) the Initial Dividend Threshold immediately prior to the effective time of such Merger Event, *divided by* (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Merger Event (such quotient rounded down to nearest cent).

(ii) In the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to the second paragraph of subsection (a) above and excluding any dissenters' appraisal rights) is composed in part of shares of Merger Common Stock, the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to (x) the Initial Dividend Threshold immediately prior to the effective time of such Merger Event, *multiplied by* (y) the Merger Valuation Percentage for such Merger Event (such quotient rounded down to nearest cent).

(iii) For the avoidance of doubt, in the case of a Merger Event in which the Reference Property (determined, as appropriate, pursuant to the second paragraph of subsection (a) above and excluding any dissenters' appraisal rights) is composed entirely of consideration other than shares of common stock, the Initial Dividend Threshold at and after the effective time of such Merger Event shall be equal to zero.

(d) For purposes of subsection (c) of this Section 4.07, the following terms shall have the following meanings:

(i) The "**Merger Valuation Percentage**" for any Merger Event shall be equal to (x) the arithmetic average of the Last Reported Sale Prices of one share of such Merger Common Stock over the relevant Merger Valuation Period (determined as if references to "Common Stock" in the definition of "Last Reported Sale Price" were references to the "Merger Common Stock" for such Merger Event), *divided by* (y) the arithmetic average of the Last Reported Sale Prices of one share of Common Stock over the relevant Merger Valuation Period.

(ii) The "**Merger Valuation Period**" for any Merger Event means the five consecutive Trading Day period immediately preceding, but excluding, the effective date for such Merger Event.

SECTION 4.08 *Taxes on Shares Issued.* The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto; *provided, however*, that if such documentary, stamp or similar issue or transfer tax is due because the Holder or beneficial owner of such Notes has requested that shares of Common Stock be issued in a name other than that of

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the Holder or beneficial owner of the converted Notes, then such taxes shall be paid by such Holder or beneficial owner, and the Company shall not be required to issue or deliver any stock certificate evidencing such shares unless and until such Holder or beneficial owner shall have paid to

the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 4.09 *Reservation of Shares; Shares to be Fully Paid; Compliance With Governmental Requirements; Listing of Common Stock.* The Company shall reserve, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Notes would be converted by a single Holder and that Physical Settlement is applicable).

The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

SECTION 4.10 *Responsibility of Trustee.* The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate, to determine whether any facts exist which may require any adjustment of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any other securities or property that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Conversion Agent and if it is so appointed by the Company and accepts such appointment, as Bid Solicitation Agent.

SECTION 4.11 *Notice to Holders Prior to Certain Actions.* In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 4.04 or Section 4.12; or

(b) Merger Event; or

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(c) voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Supplemental Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder of Notes at such Holder's address appearing on in the Security Register, which the Company shall provide to the Trustee, as promptly as practicable but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (y) the date on which such Merger Event, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend (or any other distribution), Merger Event, dissolution, liquidation or winding up.

SECTION 4.12 *Stockholder Rights Plan.* Each share of Common Stock, if any, issued upon conversion of Notes pursuant to this Article 4 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any stockholder rights plan adopted by the Company and in effect upon conversion of such Notes, as the same may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed to all holders of the Common Stock, shares of the Company's Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants as described in Section 4.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE 5 REMEDIES

SECTION 5.01 *Events of Default.* In addition to the Events of Default specified in Section 501 of the Original Indenture, each of the following events shall be an "**Event of Default**" wherever used herein with respect to the Notes:

(a) default in the payment of principal of any Note when due and payable upon purchase in connection with a Fundamental Change, upon declaration of acceleration or otherwise;

(b) failure by the Company to comply with its obligation to convert the Notes in accordance with the Indenture upon exercise of a

(c) failure by the Company to provide a Fundamental Change Company Notice pursuant to Section 3.01(b) or notice of a specified corporate transaction required by Section 4.01(b)(iii) or Section 4.01(b)(iv) in accordance with the relevant Section, in each case when due; and

(d) default by the Company or any of its Subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$50 million in the aggregate of the Company or any such Subsidiary, whether such indebtedness exists on the date of this Supplemental Indenture or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise.

SECTION 5.02 *Additional Interest.* Notwithstanding any provisions of the Indenture to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to (i) its failure to file with the Trustee pursuant to Section 314(a)(1) of the Trust Indenture Act any documents or reports that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or (ii) its failure to comply with its reporting obligations in Section 703 of the Original Indenture, as modified by Section 2.03, shall after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes Outstanding ("**Additional Interest**") for each day during the 60-day period beginning on, and including, the occurrence of such an Event of Default during which such Event of Default is continuing. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 61st day after such Event of Default occurs (if such Event of Default is not cured or waived prior to such 61st day), the Notes shall be subject to acceleration as provided in Section 502 of the Original Indenture. This Section 5.02 shall not affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. In the event the Company does not timely elect to pay Additional Interest following an Event of Default in accordance with this Section 5.02, the Notes shall be subject to acceleration as provided in Section 502 of the Original Indenture.

In order to elect to pay Additional Interest as the sole remedy during the first 60 days after the occurrence of an Event of Default described in the immediately preceding paragraph, the Company must give notice to Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 60-day period. Upon the failure to timely give all Holders, the Trustee and the Paying Agent such notice, the Notes shall be immediately subject to acceleration as provided in Section 502 of the Original Indenture.

SECTION 5.03 *Waiver; Unconditional Right of Holders to Receive Amounts Due Upon Conversion.* (a) In addition to the circumstances set forth in Section 513 of the Original Indenture and notwithstanding any provision to the contrary in the Indenture, Holders of the Notes may not on behalf of the Holders of all Notes waive any past Default with respect to the Company's failure to (a) pay or deliver, as the case may be, the consideration due upon conversion in accordance with Article 4 or (b) pay the Fundamental Change Purchase Price (if applicable) in accordance with Article 3.

(a) In addition to the circumstances set forth in Section 508 of the Original Indenture and notwithstanding any provision to the contrary in the Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive amounts due upon conversion in accordance with Article 4 and the Fundamental Change Purchase Price (if applicable) in accordance with Article 3 and to institute suit for the enforcement of any such payment or delivery, as the case may be, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.04 *Notice of Defaults.* Notwithstanding any provision to the contrary in the Indenture, (a) the list of exceptions in Section 601 of the Original Indenture pursuant to which the Trustee may not withhold notice of any Default under the Indenture shall include the payment of the Fundamental Change Purchase Price (if applicable) in accordance with Article 3 and the payment or delivery, as the case may be, of the consideration due upon conversion of the Notes in accordance with Article 4 and (b) in addition to any obligations of the Company under Section 601 of the Original Indenture, the Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events that would constitute an Event of Default, the status of such events and what action the Company is taking or proposes to take in respect thereof.

SECTION 5.05 *Overdue Payments.* Notwithstanding Section 503 of the Original Indenture, payments of (a) principal of the Notes, (b) to the extent lawful, interest on the Notes and (c) the Fundamental Change Purchase Price (if applicable) in accordance with Article 3 that are not made when due shall, in each case, accrue interest at the annual rate of the then-applicable interest rate of the Notes from the required payment date (any such amounts, "**Defaulted Amounts**"). The Company shall pay any such Defaulted Amounts in accordance with the provisions of Section 307 of the Original Indenture and, for this purpose, each reference to Defaulted Interest in the Original Indenture shall be deemed to be a reference to Defaulted Amounts. In addition, all references in Section 503 of the Original Indenture to "principal" shall, with respect to the Notes, be deemed to be references to "principal (including the Fundamental Change Purchase Price, if applicable)."

ARTICLE 6 SATISFACTION AND DISCHARGE

SECTION 6.01 *Satisfaction and Discharge of the Supplemental Indenture.* Articles 4 and 14 of the Original Indenture shall not apply to the Notes. Instead, the satisfaction and discharge provisions set forth in this Article 6 shall, with respect to the Notes, supersede in their entirety Articles 4 and 14 of the Original Indenture, and all references in the Original Indenture to Articles 4 and 14 thereof and satisfaction and discharge provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Article 6 and the satisfaction

and discharge provisions set forth in this Article 6, respectively. When (a) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether at Stated Maturity, on any Fundamental Change Purchase Date, upon conversion or otherwise) and the Company shall deposit with the Trustee, in trust, or deliver to

the Holders, as applicable, cash or cash and shares of Common Stock, if any (in the case of any conversion to which Physical Settlement or Combination Settlement applies), sufficient to pay all amounts due (and shares of Common Stock deliverable following conversion, if applicable) on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied, except in the event the Notes are due and payable solely in cash at the Stated Maturity of the Notes or upon an earlier Fundamental Change Purchase Date, by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Supplemental Indenture shall cease to be of further effect (except as to (i) rights hereunder of Holders of the Notes to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders of the Notes, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (ii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 102 of the Original Indenture and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Supplemental Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee, including the fees and expenses of its counsel, and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Supplemental Indenture or the Notes.

Notwithstanding the satisfaction and discharge of this Supplemental Indenture or the Original Indenture, the obligations of the Company to the Trustee and any predecessor Trustee under this Section 6.01 or Section 606 of the Original Indenture, the obligations of the Company to any Authenticating Agent under Section 611 of the Original Indenture and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of Section 401 of the Original Indenture, the obligations of the Trustee under Section 402 of the Original Indenture and the last paragraph of Section 1003 of the Original Indenture shall survive.

SECTION 6.02 *Deposited Monies to Be Held in Trust by Trustee.* Subject to Section 6.04, all monies and shares of Common Stock, if any, deposited with the Trustee pursuant to Section 6.01 shall be held in trust for the sole benefit of the Holders of the Notes, and such monies and shares of Common Stock shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment, settlement or redemption of which such monies or shares of Common Stock have been deposited with the Trustee, of all sums or amounts due and to become due thereon for principal and interest, if any.

SECTION 6.03 *Paying Agent to Repay Monies Held.* Upon the satisfaction and discharge of this Indenture, all monies and shares of Common Stock, if any, then held by any Paying Agent (if other than the Trustee) shall, upon written request of the Company, be repaid to

it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies and shares of Common Stock.

SECTION 6.04 *Return of Unclaimed Monies.* Subject to the requirements of applicable law, any monies and shares of Common Stock deposited with or paid to the Trustee for payment of the principal of or interest, if any, on the Notes and not applied but remaining unclaimed by the Holders of the Notes for two years after the date upon which the principal of or interest, if any, on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand, and all liability of the Trustee shall thereupon cease with respect to such monies and shares of Common Stock; and the Holder of any of the Notes shall thereafter look only to the Company for any payment or delivery that such Holder of the Notes may be entitled to collect unless an applicable abandoned property law designates another Person.

SECTION 6.05 *Reinstatement.* If the Trustee or the Paying Agent is unable to apply any money or shares of Common Stock in accordance with Section 6.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under the Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 6.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money and shares of Common Stock in accordance with Section 6.02; *provided, however*, that if the Company makes any payment of interest on, principal of or payment or delivery in respect of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or shares of Common Stock, if any, held by the Trustee or Paying Agent.

ARTICLE 7 SUPPLEMENTAL INDENTURES

SECTION 7.01 *Supplemental Indentures Without Consent of Holders.* In addition to any permitted amendment or supplement to the Indenture pursuant to Section 901 of the Original Indenture, the Company and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Holder of the Notes:

- (a) to add guarantees with respect to the Notes or remove any such guarantees;
- (b) to secure the Notes;
- (c) to cure any omission, ambiguity, manifest error or defect and correcting any inconsistency in the Indenture or to make any change that does not adversely affect the rights of any Holder;
- (d) to add provisions for the issuance of Additional Notes;
- (e) to comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

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(f) to comply with their obligations to execute and deliver a supplemental indenture hereunder including pursuant to the provisions of Section 4.07, 8.01 or 8.02; or

(g) to provide for uncertificated Notes in addition to or in place of certificated Notes; provided, however, that the uncertificated Notes are issued as Registered Securities for purposes of Section 163(f) of the United States Internal Revenue Code of 1986, as amended, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the United States Internal Revenue Code of 1986, as amended.

Clause (c) of this Section 7.01 shall, with respect to the Notes, supersede in its entirety Section 901(8) of the Original Indenture and all references in the Original Indenture to Section 901(8) shall, with respect to the Notes, be deemed to be references to clause (c) of this Section 7.01.

SECTION 7.02 *Supplemental Indentures With Consent of Holders.* In addition to the amendments or supplements to the Indenture pursuant to Section 902 of the Original Indenture that require the consent of each Holder of an Outstanding Note affected thereby, no amendment, supplement or waiver, including a waiver in relation to a past Event of Default, may:

(a) reduce the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the Holders of Notes the Company's obligation to make any such payment, whether through an amendment or waiver of provisions in the covenants, definitions related thereto or otherwise; or

(b) change the ranking of the Notes.

SECTION 7.03 *Notice of Amendment or Supplement.* After an amendment or supplement under this Article 7 or Article 9 of the Original Indenture becomes effective, the Company shall mail to the Holders a notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

SECTION 7.04 *Additional Trustee Provisions to be Added to Section 602 of the Original Indenture.* In no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Trustee shall use its best efforts to resume performance as soon as practicable under the circumstances.

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The Trustee may request that the Company deliver and 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.

The permissive rights of the Trustee enumerated herein shall not be construed as duties.

ARTICLE 8 SUCCESSOR COMPANY

SECTION 8.01 *Consolidation, Merger and Sale of Assets.* In addition to the provisions set forth under Article 8 of the Original Indenture, the Company shall not consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to, another Person, unless:

(a) the resulting, surviving or transferee Person (if not the Company) (the "**Successor Company**") is an entity organized and existing under the laws of the U.S., any state thereof or the District of Columbia and such Successor Company (if not the Company) expressly assumes by supplemental indenture all of the Company's obligations under the Notes and the Indenture; and

(b) if as a result of such transaction the Notes become convertible into common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations of the Company or such Successor Company under the Notes and the Supplemental Indenture; and

(c) in the case of any sale, conveyance, transfer or lease that constitutes a Merger Event, or any consolidation or merger, the resulting, surviving or transferee person (if not the Company) is a corporation; and

(d) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing under the Indenture; and

(e) the Company has delivered to the Trustee the Officers' Certificate and Opinion of Counsel pursuant to Section 8.03.

In the case of a sale, conveyance, transfer or lease to one or more of the Company's Subsidiaries of all or substantially all of the Company's properties and assets, the Notes will remain convertible into the Common Stock, subject to the provisions described in Section 4.07.

SECTION 8.02 *Successor Person Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease in which the Company is not the surviving corporation and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of and interest on all of the Notes, and the due and punctual performance and observance of all of the covenants and conditions of the Indenture to be performed or satisfied by the Company, such

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Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of this first part, and the Company shall be discharged from its obligations under the Notes and the Indenture, except in the case of a lease of all or substantially all of the Company's properties and assets. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes, issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in the Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under the Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer, upon compliance with this Article 8 the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 8 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be discharged from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

SECTION 8.03 *Opinion of Counsel to Be Given to Trustee.* Prior to execution of any supplemental indenture pursuant to this Article 8, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel in accordance with Section 102 of the Original Indenture as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption complies with the provisions of this Article 8.

ARTICLE 9 MISCELLANEOUS

SECTION 9.01 *Governing Law.* THIS SUPPLEMENTAL INDENTURE AND EACH OF THE NOTES, AND ANY CLAIM CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE AND EACH OF THE NOTES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS).

SECTION 9.02 *No Adverse Interpretation of Other Agreements.* This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 9.03 *Legal Holidays.* All references in Section 112 of the Original Indenture to "Repayment Date" shall, for purposes of the Notes, be deemed to be references to "Fundamental Change Purchase Date."

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SECTION 9.04 *No Security Interest Created.* Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

SECTION 9.05 *Trust Indenture Act.* This Supplemental Indenture will be subject to, and governed by, the provisions of the Trust Indenture Act that are required to be part of this Supplemental Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 9.06 *Benefits of Supplemental Indenture.* Nothing in this Supplemental Indenture or in the Notes or coupons, express or implied, shall give to any Person (including any Security Registrar, any Paying Agent, any Authenticating Agent, Conversion Agent, any Bid Solicitation Agent and their successors hereunder), other than the parties hereto, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

SECTION 9.07 *Calculations.* The Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, accrued interest payable on the Notes and the Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if other than the Trustee), and each of the Trustee and Conversion Agent (if other than the Trustee) is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the request of that Holder at the sole cost and expense of the Company.

SECTION 9.08 *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 9.09 *Execution in Counterparts.* This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 9.10 *Separability Clause.* In case any provision in this Supplemental Indenture or in any Note or coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 9.11 *Ratification of Original Indenture.* The Original Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Original Indenture in the manner and to the extent herein and therein provided. For the avoidance of doubt, each of the Company and each Holder of the Notes, by its acceptance of such Notes, acknowledges and agrees that all of the rights, privileges, protections, immunities and benefits afforded to the Trustee under the Original

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Indenture are deemed to be incorporated herein, and shall be enforceable by the Trustee hereunder, as if set forth herein in full.

SECTION 9.12 *The Trustee.* The recitals in this Supplemental Indenture are made by the Company only and not the Trustee, and all of the provisions contained in the Original Indenture in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect of the Notes and of this Supplemental Indenture as fully and with like effect as set forth in full herein.

SECTION 9.13 *Applicability of First Supplemental Indenture and Second Supplemental Indenture.* The First Supplemental Indenture (the "**First Supplemental Indenture**") to the Original Indenture, dated as of June 14, 2007, among Janus Capital Group Inc. and The Bank of New York Mellon Trust Company, N.A. (as successor to The Bank of New York Trust Company, N.A.), and the Second Supplemental Indenture (the "**Second Supplemental Indenture**") to the Original Indenture, dated as of July 21, 2009, among Janus Capital Group Inc. and The Bank of New York Mellon Trust Company, N.A. (as successor to The Bank of New York Trust Company, N.A.), shall not apply to the Notes and the term Indenture as used herein shall not include the First Supplemental Indenture or the Second Supplemental Indenture.

[Remainder of the page intentionally left blank]

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

JANUS CAPITAL GROUP INC.

By: /s/ Jennifer McPeek
Name: Jennifer McPeek
Title: Senior Vice President, Corporate Finance and
Treasurer

[Trustee Signature Follows]

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as
Trustee

By: /s/ Lawrence M. Kusch

SCHEDULE A

The following table sets forth the number of Additional Shares to be received per \$1,000 principal amount of Notes pursuant to Section 4.06 for each Stock Price and Effective Date set forth below:

Effective Date	\$8.69	\$9.00	\$9.50	\$10.00	\$10.86	\$11.00	\$12.50	\$15.00	\$20.00	\$22.50	\$25.00
6/19/2013	23.0149	21.3263	18.1512	15.4527	11.7090	11.1862	6.8244	2.8085	0.2281	0.0371	0.0084
7/15/2014	23.0149	21.0441	17.7618	14.9835	11.1561	10.6253	6.2412	2.3343	0.0706	0.0005	0.0002
7/15/2015	23.0149	20.7123	17.2980	14.4253	10.5071	9.9688	5.5843	1.8556	0.0205	0.0003	0.0002
7/15/2016	23.0149	20.2686	16.6389	13.6135	9.5504	9.0011	4.6350	1.2228	0.0000	0.0000	0.0000
7/15/2017	23.0149	19.5120	15.4598	12.1374	7.8162	7.2524	3.0255	0.3918	0.0000	0.0000	0.0000
7/15/2018	23.0149	19.0513	13.2034	7.9402	0.0212	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

EXHIBIT A

[FORM OF FACE OF NOTE]

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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 LIMITED CIRCUMSTANCES.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE 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 HEREON 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.

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JANUS CAPITAL GROUP INC.
0.75% Convertible Senior Note due 2018

No. [] Initially \$[]

CUSIP No. 47102X AH8

JANUS CAPITAL GROUP INC., a Delaware corporation (herein called the "Company", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay CEDE & CO., or registered assigns, [] MILLION DOLLARS (\$[]) (or such lesser principal amount as shall be specified in the "Schedule of Exchanges of Securities" attached hereto) on July 15, 2018 unless earlier converted or repurchased, and to pay interest thereon as set forth in the manner, at the rates and to the Persons set forth in the Indenture.

This Note shall bear interest at a rate of 0.75% per annum from June 19, 2013 or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note will be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each January 15 and July 15, commencing on January 15, 2014, to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest will be payable at the option of the Company on the terms set forth in Section 5.02 of the within-mentioned Supplemental Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to such Section 5.02 and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

The Company will pay interest on overdue principal (including the Fundamental Change Purchase Price, if applicable), and, to the extent lawful, on Defaulted Interest, in each case at the annual rate of the then-applicable interest rate from the required payment date. Interest not paid when due and any interest on principal (including the Fundamental Change Purchase Price, if applicable) or interest not paid when due shall be paid to Holders by the Company in accordance with the provisions of Section 307 of the Original Indenture and, for this purpose, each reference to

Defaulted Interest in the Original Indenture shall be deemed to include such interest payable in respect of overdue principal (including the Fundamental Change Purchase Price, if applicable).

The Company shall pay principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Security Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer.

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

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control. This Note, and any claim or controversy or dispute arising under or related to this Note, shall be governed by and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of laws).

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, JANUS CAPITAL GROUP INC. has caused this instrument to be signed manually or by facsimile by one of its duly authorized Officers.

Dated: []

JANUS CAPITAL GROUP INC.

By: _____
Name:
Title:

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CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series referred to in the within-mentioned Indenture.

Dated: []

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Name:
Title:

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[FORM OF REVERSE OF NOTE]

JANUS CAPITAL GROUP INC.
0.75% Convertible Senior Note due 2018

This Note is one of a duly authorized issue of Securities of the Company (herein called the "Notes"), issued under an Indenture dated as of November 6, 2001, as previously amended and supplemented from time to time in accordance with the terms thereof (herein called the "Original Indenture") and as further supplemented by the Third Supplemental Indenture dated as of June 19, 2013 (herein called the "Supplemental

Indenture” and the Original Indenture, as supplemented by the Supplemental Indenture, the “**Indenture**”) by and between the Company and The Bank of New York Mellon Trust Company, N.A., herein called the “**Trustee**”, and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

This Note is not subject to redemption at the option of the Company prior to July 15, 2018 and, for the avoidance of doubt, this Note is not subject to the provisions of Article 11 of the Original Indenture.

The provisions in Articles 4 and 14 of the Original Indenture shall not apply with respect to the Notes, and Article 6 of the Supplemental Indenture supersedes the entirety thereof.

As provided in and subject to the provisions of the Indenture, upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder’s option, to require the Company to repurchase all of such Holder’s Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Purchase Date at a price equal to the Fundamental Change Purchase Price.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option (i) during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding April 15, 2018, and (ii) on or after April 15, 2018, at any time prior to the close of business on the Business Day immediately preceding the Stated Maturity, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination thereof, at the Company’s election, at the applicable Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Company will make all payments in respect of the Fundamental Change Purchase Price and the principal amount on the Stated Maturity thereof, as the case may be, to the holder who surrenders a Note to the Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

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The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, in case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of and interest on all Notes may be declared due and payable, by either the Trustee or Holders of not less than 25% in aggregate principal amount of Notes then Outstanding, and upon said declaration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal of, interest on and the consideration due upon conversion of, this Note at the time, place and rate, and in the coin and currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company and the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or Trustee may treat the Person in whose name the Note

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is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT (Cust)	Custodian
TEN ENT - as tenants by the entireties	(Minor)	
JT TEN - as joint tenants with right of Survivorship and not as tenants in common	Uniform Gifts to Minors Act	(State)

Additional abbreviations may also be used though not in the above list.

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SCHEDULE A

SCHEDULES OF EXCHANGES OF SECURITIES

JANUS CAPITAL GROUP INC.
0.75% Convertible Senior Notes due 2018

The initial principal amount of this Global Note is [] MILLION DOLLARS (\$[]). The following exchanges, purchases or conversions of a part of this Global Note have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in principal amount of this Global Note</u>	<u>Amount of increase in principal amount of this Global Note</u>	<u>Principal amount of this Global Note following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Custodian</u>
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ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: Janus Capital Group Inc.

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (which is \$1,000 or an integral multiple hereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company's election, in accordance with the terms of the Indenture referred to in this Note, and directs that cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any check in payment for fractional shares of Common Stock, and any Notes representing any unconverted principal amount hereof, be paid or issued and delivered, as the case may be, to the registered Holder hereof unless a different name has been indicated below. Subject to certain exceptions set forth in the Indenture, if this notice is being delivered on a date after the close of business on a Regular Record Date and prior to the open of business on the related Interest Payment Date, this notice is accompanied by payment of an amount equal to the interest payable on such Interest Payment Date of the principal of this Note to be converted. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto as set forth in Section 4.08 of the Supplemental Indenture. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Principal amount to be converted (in an integral multiple of \$1,000, if less than all):

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

Signature Guarantee

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Fill in for registration of any shares of Common Stock and Notes if to be issued otherwise than to the registered Holder.

(Name)

(Address)

Please print Name and Address
(including zip code number)

Social Security or other Taxpayer
Identifying Number

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ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE]

To: Janus Capital Group Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Janus Capital Group Inc. (the “**Company**”) as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with the applicable provisions of this Note and the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Purchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Purchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number

principal amount to be repaid (if less than all):
\$ _____, 000

NOTICE: The signature on the Fundamental Change Purchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ to transfer the said Note on the books of the Company, with full power of substitution in the premises.

 Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

- (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.

 Signature Guarantee

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Section 3: EX-10.1 (EX-10.1)

Exhibit 10.1

EXCHANGE AGREEMENT

(the “**Undersigned**”), for itself and on behalf of the beneficial owners listed on **Exhibit A** hereto (“**Accounts**”) for whom the Undersigned holds contractual and investment authority (each Account, as well as the Undersigned if it is exchanging Existing Notes (as defined below) hereunder, a “**Holder**”), enters into this Exchange Agreement (the “**Agreement**”) with Janus Capital Group Inc. (the “**Company**”) on June 14, 2013 whereby the Holders will exchange (the “**Exchange**”) the Company’s 3.25% Convertible Senior Notes due 2014 (the “**Existing Notes**”) for the Company’s new 0.75 % Convertible Senior Notes due 2018 (the “**New Notes**”) that will be issued pursuant to the provisions of an Indenture dated as of November 6, 2001 (the “**Base Indenture**”) between the Company and the Bank of New York Mellon Trust Company, N.A., (as successor to The Chase Manhattan Bank) (the “**Trustee**”), as supplemented by the Third Supplemental Indenture thereto, to be dated as of June 19, 2013 (the “**Supplement**,” and, together with the Base Indenture and all other supplements thereto, the “**Indenture**”) by and between the Company and the Trustee.

On and subject to the terms hereof, the parties hereto agree as follows:

Article I: Exchange of the Existing Notes for New Notes

Subject to the terms set forth in this Agreement, at the Closing (as defined herein), the Undersigned hereby agrees to cause the Holders to exchange and deliver to the Company the following Existing Notes, and in exchange therefor the Company hereby agrees to issue to the Holders the principal amount of New Notes described below and to pay in cash the following accrued but unpaid interest on such Existing Notes:

Principal Amount of Existing Notes to be Exchanged: \$ _____
 (the “**Exchanged Notes**”).

Principal Amount of New Notes to be Issued in the Exchange: \$ _____
 (the “**Holders’ New Notes**”).

Cash Payment of Accrued but Unpaid Interest on Exchanged Notes: \$ _____
 (the “**Cash Payment**”).

The closing of the Exchange (the “**Closing**”) shall occur on a date (the “**Closing Date**”) no later than three business days after the date of this Agreement. At the Closing, (a) each Holder shall deliver or cause to be delivered to the Company all right, title and interest in and to its Exchanged Notes (and no other consideration) free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, “**Liens**”), together with any documents of conveyance or transfer that the

Company may deem necessary or desirable to transfer to and confirm in the Company all right, title and interest in and to the Exchanged Notes free and clear of any Liens, and (b) the Company shall deliver to each Holder the principal amount of Holders' New Notes and the portion of the Cash Payment specified on Exhibit A hereto (or, if there are no Accounts, the Company shall deliver to the Undersigned, as the sole Holder, the Holders' New Notes and the

Cash Payment specified above); provided, however, that the parties acknowledge that the delivery of the Holders' New Notes to the Holder may be delayed due to procedures and mechanics within the system of the Depository Trust Company or the New York Stock Exchange (including the procedures and mechanics regarding the listing of the Conversion Shares (as defined below) on the New York Stock Exchange) or events beyond the Company's control and that such delay will not be a default under this Agreement so long as (i) the Company is using its best efforts to effect the issuance of one or more global notes representing the New Notes, (ii) such delay is no longer than five business days, and (iii) interest shall accrue on such New Notes from the Closing Date. Simultaneously with or after the Closing, the Company may issue New Notes to one or more other holders of outstanding Existing Notes or to other investors, subject to the terms of the Indenture.

Article II: Covenants, Representations and Warranties of the Holders

Each Holder (and, where specified below, the Undersigned) hereby covenants (solely as to itself), as follows, and makes the following representations and warranties (solely as to itself), each of which is and shall be true and correct on the date hereof and at the Closing, to the Company and Barclays Capital Inc., and all such covenants, representations and warranties shall survive the Closing.

Section 2.1 **Power and Authorization.** The Holder is duly organized, validly existing and in good standing, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Exchange contemplated hereby. If the Undersigned is executing this Agreement on behalf of Accounts, (a) the Undersigned has all requisite discretionary and contractual authority to enter into this Agreement on behalf of, and bind, each Account, and (b) Exhibit A hereto is a true, correct and complete list of (i) the name of each Account, (ii) the principal amount of such Account's Exchanged Notes, (iii) the principal amount of Holders' New Notes to be issued to such Account in respect of its Exchanged Notes, and (iv) the portion of the Cash Payment to be made to such Account in respect of the accrued interest on its Exchanged Notes.

Section 2.2 **Valid and Enforceable Agreement; No Violations.** This Agreement has been duly executed and delivered by the Undersigned and the Holder and constitutes a legal, valid and binding obligation of the Undersigned and the Holder, enforceable against the Undersigned and the Holder in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the "**Enforceability Exceptions**"). This Agreement and consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the Undersigned's or the Holder's organizational documents, (ii) any agreement or instrument to which the Undersigned or the Holder is a party or by which the Undersigned or the Holder or any of their respective assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Undersigned or the Holder.

Section 2.3 **Title to the Exchanged Notes.** The Holder is the sole legal and beneficial owner of the Exchanged Notes set forth opposite its name on Exhibit A hereto (or, if there are no

Accounts, the Undersigned is the sole legal and beneficial owner of all of the Exchanged Notes). The Holder has good, valid and marketable title to its Exchanged Notes, free and clear of any Liens (other than pledges or security interests that the Holder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker). The Holder has not, in whole or in part, except as described in the preceding sentence, (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Exchanged Notes or its rights in its Exchanged Notes, or (b) given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Exchanged Notes. Upon the Holder's delivery of its Exchanged Notes to the Company pursuant to the Exchange, such Exchanged Notes shall be free and clear of all Liens created by the Holder.

Section 2.4 **Accredited Investor and Qualified Institutional Buyer.** The Holder is: (i) an "accredited investor" within the meaning of Rule 501 of Regulation D ("**Regulation D**") promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"), and (ii) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act.

Section 2.5 **No Affiliate, Related Party or 5% Stockholder Status.** The Holder is not, and has not been during the consecutive three month period preceding the date hereof, a director, officer or "affiliate" within the meaning of Rule 144 promulgated under the Securities Act (an "**Affiliate**") of the Company. To its knowledge, the Holder did not acquire any of the Exchanged Notes, directly or indirectly, from an Affiliate of the Company. The Holder and its Affiliates collectively beneficially own and will beneficially own as of the Closing Date (but without giving effect to the Exchange) (i) less than 5% of the outstanding common stock, par value \$0.01 per share, of the Company (the "**Common Stock**") and (ii) less than 5% of the aggregate number of votes that may be cast by holders of those outstanding securities of the Company that entitle the holders thereof to vote generally on all matters submitted to the Company's stockholders for a vote (the "**Voting Power**"). The Holder is not a subsidiary, affiliate or, to its knowledge, otherwise closely-related to any director or officer of the Company or beneficial owner of 5% or more of the outstanding Common Stock or Voting Power (each such director, officer or beneficial owner, a "**Related Party**"). To its knowledge, no Related Party beneficially owns 5% or more of the outstanding voting equity, or votes entitled to be cast by the outstanding voting equity, of the Holder.

Section 2.6 **No Illegal Transactions.** Each of the Undersigned and the Holder has not, directly or indirectly, and no person acting

on behalf of or pursuant to any understanding with it has, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving any of the Company's securities) since the time that the Undersigned was first contacted by either the Company, Barclays Capital Inc. or any other person regarding the Exchange, this Agreement or an investment in the New Notes or the Company. Each of the Undersigned and the Holder covenants that neither it nor any person acting on its behalf or pursuant to any understanding with it will engage, directly or indirectly, in any transactions in the securities of the Company (including Short Sales) prior to the time the transactions contemplated by this Agreement are publicly disclosed. "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of

direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers. Solely for purposes of this Section 2.6, subject to the Undersigned's and the Holder's compliance with their respective obligations under the U.S. federal securities laws and the Undersigned's and the Holder's respective internal policies, (a) "Undersigned" and "Holder" shall not be deemed to include any employees, subsidiaries or affiliates of the Undersigned or the Holder that are effectively walled off by appropriate "Chinese Wall" information barriers approved by the Undersigned's or the Holder's respective legal or compliance department (and thus have not been privy to any information concerning the Exchange), and (b) the foregoing representations of this Section 2.6 shall not apply to any transaction by or on behalf of an Account that was effected without the advice or participation of, or such Account's receipt of information regarding the Exchange provided by, the Undersigned.

Section 2.7 Adequate Information; No Reliance. The Holder acknowledges and agrees that (a) the Holder has been furnished with all materials it considers relevant to making an investment decision to enter into the Exchange and has had the opportunity to review the Company's filings and submissions with the Securities and Exchange Commission (the "SEC"), including, without limitation, all information filed or furnished pursuant to the Exchange Act, (b) the Holder has had a full opportunity to ask questions of the Company concerning the Company, its business, operations, financial performance, financial condition and prospects, and the terms and conditions of the Exchange, (c) the Holder has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Exchange and to make an informed investment decision with respect to such Exchange and (d) the Holder is not relying, and has not relied, upon any statement, advice (whether accounting, tax, financial, legal or other), representation or warranty made by the Company or any of its affiliates or representatives including, without limitation, and Barclays Capital Inc., except for (A) the publicly available filings and submissions made by the Company with the SEC under the Exchange Act, and (B) the representations and warranties made by the Company in this Agreement.

Section 2.8 No Public Market; Call Hedge. The Holder understands that (a) no public market exists for the New Notes, and that there is no assurance that a public market will ever develop for the New Notes, and (b) the Company may enter into the Call Hedge (as defined below), which may affect the market price per share of Common Stock on an ongoing basis or periodically after the date hereof.

Article III: Covenants, Representations and Warranties of the Company

The Company hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Holders, and Barclays Capital Inc., and all such covenants, representations and warranties shall survive the Closing.

Section 3.1 Power and Authorization. The Company is duly incorporated, validly existing and in good standing under the laws of its state of incorporation, and has the power,

authority and capacity to execute and deliver this Agreement and the Supplement, to perform its obligations hereunder and thereunder, and to consummate the Exchange contemplated hereby.

Section 3.2 Valid and Enforceable Agreements; No Violations. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforcement may be subject to the Enforceability Exceptions. At the Closing, the Supplement, substantially in the form of Exhibit B hereto, will have been duly executed and delivered by the Company and will govern the terms of the New Notes, and the Indenture will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforcement may be subject to the Enforceability Exceptions. This Agreement, the Indenture and consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the charter, bylaws or other organizational documents of the Company, (ii) any agreement or instrument to which the Company is a party or by which any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Company, except, in the case of clauses (ii) and (iii), as would not reasonably be expected to have a material adverse effect on the condition (financial or otherwise), earnings or business of the Company and its subsidiaries considered as one enterprise.

Section 3.3 Validity of the Holders' New Notes. The Holders' New Notes have been duly authorized by the Company and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to the Holder pursuant to the Exchange against delivery of the Exchanged Notes in accordance with the terms of this Agreement, the Holders' New Notes will be valid and binding obligations of the Company, enforceable in accordance with their terms, except that such enforcement may be subject to the Enforceability Exceptions, and the Holders' New Notes will not be subject to any preemptive, participation, rights of first refusal or other similar rights. Assuming the accuracy of each Holder's representations and warranties hereunder, the Holders' New Notes (a) will be issued in the Exchange exempt from the registration

requirements of the Securities Act pursuant to Section 4(2) of the Securities Act and Rule 506 of Regulation D under the Securities Act, (b) will, at the Closing, be free of any restrictions on resale by such Holder pursuant to Rule 144 promulgated under the Securities Act, and (c) will be issued in compliance with all applicable state and federal laws concerning the issuance of the Holders' New Notes.

Section 3.4 **Validity of Underlying Common Stock.** The Holders' New Notes will be convertible into cash, shares of Common Stock (the "**Conversion Shares**") or a combination of cash and Conversion Shares in accordance with the terms of the Supplement. The Conversion Shares have been duly authorized and reserved by the Company for issuance upon conversion of the Holders' New Notes and, when issued upon conversion of the Holders' New Notes in accordance with the terms of the Holders' New Notes and the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of the Conversion Shares will not be subject to any preemptive, participation, rights of first refusal or other similar rights.

Section 3.5 **Listing Approval.** At the Closing, the Conversion Shares shall be eligible for trading on the New York Stock Exchange, subject to official notice of issuance.

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Section 3.6 **Disclosure.** On or before the first business day following the date of this Agreement, the Company shall issue a publicly available press release or file with the SEC a Current Report on Form 8-K disclosing all material terms of the Exchange (to the extent not previously publicly disclosed).

Article IV: Miscellaneous

Section 4.1 **Call Hedge.** Concurrently with or shortly following its execution of this Agreement, the Company intends to enter into convertible note hedge transactions (the "**Call Hedge**") with one or more counterparties intended to reduce the dilutive impact of the conversion feature of the New Notes on the outstanding shares of Common Stock. The counterparties in these hedge transactions or their respective affiliates may immediately enter into various transactions (including transactions with RBC Capital Markets or their respective affiliates) with respect to the Common Stock or related derivative securities that could have the effect of increasing or preventing a decline in the market price per share of Common Stock. Additionally, such parties may subsequently modify or eliminate their hedge positions through sales of Common Stock or by unwinding derivatives transactions (such as during New Notes conversion settlement averaging periods) that can have the effect of reducing the value of the consideration to be received upon conversion of New Notes.

Section 4.2 **Tax Matters.** The Company will determine the issue price of the New Notes for United States federal income tax purposes and will inform the Undersigned of the issue price reasonably promptly after the Company's determination thereof. The Company, the Undersigned and each Holder shall report the tax consequences of the Exchange and the issuance and holding of the New Notes in a manner that is consistent with the issue price, as so determined. The undersigned and each Holder shall provide to the Company a duly completed and executed Internal Revenue Service Form W-9 or applicable Form W-8 at or prior to the time of the Exchange.

Section 4.3 **Entire Agreement.** This Agreement and any documents and agreements executed in connection with the Exchange embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written agreements, representations, warranties, contracts, correspondence, conversations, memoranda and understandings between or among the parties or any of their agents, representatives or affiliates relative to such subject matter, including, without limitation, any term sheets, emails or draft documents, and is not intended to confer upon any person any rights or remedies hereunder other than the parties hereto, and, with respect to the representations and warranties in Articles II and III, Barclays Capital Inc.

Section 4.4 **Construction.** References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party.

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Section 4.5 **Governing Law.** This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, without reference to its choice of law rules.

Section 4.6 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereon delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

[Signature Page Follows]

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

“UNDERSIGNED”:

“Company”:

JANUS CAPITAL GROUP INC.

(in its capacities described in the first paragraph hereof)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Signature Page to Exchange Agreement
Janus Capital Group Inc. 3.25% Convertible Senior Notes due 2014

EXHIBIT A
Exchanging Beneficial Owners

Name of Beneficial Owner	Principal Amount of Exchanged Notes	Principal Amount of Holders' New Notes	Portion of Cash Payment

EXHIBIT B
Form of Third Supplemental Indenture

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Section 4: EX-10.2 (EX-10.2)

Exhibit 10.2



RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281
Telephone: (212) 858-7000

DATE: June 14, 2013

TO: Janus Capital Group Inc.
ATTENTION: David Grawemeyer
TELEPHONE: (303) 336-5053

FROM: RBC Capital Markets, LLC
as agent for
Royal Bank of Canada

TELEPHONE: (212) 858-7000
FACSIMILE: (212) 428-3053

SUBJECT: Convertible Bond Hedge Transaction

REFERENCE NUMBER(S): JNS-A1-C1

The purpose of this communication (this “Confirmation”) is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the “Transaction”) between **Royal Bank of Canada** (“Dealer”) and Janus Capital Group Inc. (“Counterparty”). The additional terms of the Transaction are as set forth in the Trade Notification in the form of Schedule A hereto (the “Trade Notification”), which shall reference this Confirmation and supplement, form a part of, and be subject to this Confirmation. This communication, as supplemented by the Trade Notification, constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below.

Disclosure of Agency Relationship

Dealer has appointed, as its agent, its indirect wholly-owned subsidiary, RBC Capital Markets, LLC (“RBCCM”), for purposes of conducting, on

Dealer's behalf, a business in privately negotiated transactions in options and other derivatives. You hereby are advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized RBCCM to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products.

1. This Confirmation and the Trade Notification are subject to, and incorporate, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the "**2000 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**") and, together with the 2000 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Senior Debt Indenture (the "**Base Indenture**") dated as of November 6, 2001 between Counterparty and The Bank of New York Mellon Trust Company, N.A. as trustee, as supplemented and amended by the Third Supplemental Indenture (the "**Supplemental Indenture**") to be dated as of or about June 19, 2013, between such parties (the Senior Debt Indenture, as so supplemented and amended, subject to the following paragraph, the "**Indenture**") relating to the USD 116,602,000 principal amount of 0.75% Convertible Senior Notes due 2018 (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern.

For the avoidance of doubt, references herein to sections of the Base Indenture or Supplemental Indenture are based on the drafts of the Base Indenture or Supplemental Indenture, as the case may be, most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of such agreement are changed, added or renumbered

following execution of this Confirmation but prior to the execution of such agreement, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of such agreement so reviewed. Subject to the two preceding sentences, the parties acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of execution of the Supplemental Indenture, without giving effect to any amendment or supplement to the Indenture, other than (subject to the provision under "Method of Adjustment" below relating to Counterparty Determinations) pursuant to any Merger Supplemental Indenture (as defined below). Terms in quotation marks that are not otherwise defined in this Confirmation shall have the meanings set forth in the Indenture, unless the context otherwise requires.

This Confirmation, as supplemented by the Trade Notification, evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation, as supplemented by the Trade Notification, relates. This Confirmation and the Trade Notification shall be subject to an agreement (the "**Agreement**") in the form of the ISDA 2002 Master Agreement as if Dealer and Counterparty had executed an agreement in such form (without any Schedule except for (i) the election of US Dollars ("**USD**") as the Termination Currency and (ii) the election that the "Cross Default" provisions of Section 5(a)(vi) of the Agreement will apply to Dealer and to Counterparty with (x) the phrase "or becoming capable at such time of being declared," deleted from Section 5(a)(vi)(1) of the Agreement and (y) the "Threshold Amount" with respect to Dealer being three percent (3%) of shareholders' equity of Royal Bank of Canada as of the Trade Date and with respect to Counterparty, USD 50.0 million). For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement and the Convertible Securities shall be a Specified Indebtedness with respect to the Counterparty.

All provisions contained in, or incorporated by reference in, the Agreement will govern this Confirmation and the Trade Notification except as expressly modified herein. In the event of any inconsistency between this Confirmation, the Trade Notification and either the Definitions or the Agreement, the following will prevail for purposes of the Transaction in order of precedence indicated: (i) the Trade Notification, (ii) this Confirmation, (iii) the Definitions, (iv) the Agreement (without regard to the Trade Notification and the Confirmation). For the avoidance of doubt, except to the extent of an express conflict, the application of any provision of this Confirmation, the Trade Notification, the Agreement or the Equity Definitions shall not be construed to exclude or limit the application of any other provision of this Confirmation, the Trade Notification, the Agreement or the Equity Definitions.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	June 14, 2013
Effective Date:	The closing date for the issuance of the Convertible Securities.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The common stock of Counterparty, par value USD0.001 per share (Ticker Symbol: "JNS")
Number of Options:	116,602. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised hereunder.
Number of Shares:	As of any date, the product of the Number of Options and the Conversion Rate

Conversion Rate:	As of any date, the “Conversion Rate” (as defined in the Indenture) as of such date, but without regard to any adjustments to the “Conversion Rate” pursuant to Section 4.04 (f) or 4.04(g) of the Supplemental Indenture.
Hedge Period Reference Price:	As specified in the Trade Notification, to be the average of the VWAP Prices for the Exchange Business Days during the period beginning on the Trade Date and ending on the day on which Dealer has informed Counterparty that Dealer has completed all purchases of Shares or other transactions to hedge initially its exposure with respect to the Transaction (the “ Hedge Period ”).
VWAP Price:	For any Exchange Business Day during the Hedge Period, the Rule 10b-18 dollar volume weighted average price per Share for such Exchange Business Day based on transactions executed during such Exchange Business Day, as reported on Bloomberg Page “JNS <Equity> AQR” (or any successor thereto) or, if such price is not so reported or is manifestly incorrect, as determined by the Calculation Agent using a volume weighted method.
Premium:	As specified in the Trade Notification, to be determined by reference to the table set forth in Schedule B and based on the Hedge Period Reference Price. If the exact Hedge Period Reference Price does not appear in such table, the Premium shall be determined by linear interpolation or extrapolation using the two closest Hedge Period Reference Prices appearing in such table.
Premium Payment Date:	As specified in the Trade Notification, to be the third Currency Business Day following the last day of the Hedge Period.
Exchange:	New York Stock Exchange
Related Exchanges:	All Exchanges
Procedure for Exercise:	
Exercise Dates:	Each Conversion Date
Conversion Date:	Each “Conversion Date” (as defined in the Indenture) occurring during the period from and excluding the Trade Date to and including the Expiration Date.
Relevant Convertible Securities:	For any Conversion Date, Securities, each in denominations of USD1,000 principal amount, that are submitted for conversion on such Conversion Date in accordance with the terms of the Indenture.
Exercise on Conversion Dates:	On each Conversion Date, a number of Options equal to the lesser of (i) the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount and (ii) the Number of Options on such date shall be exercised upon and only upon Counterparty providing a Notice of Exercise to Dealer in accordance

	with “Notice of Exercise” below, without further action by Counterparty.
Expiration Date:	The “Business Day” immediately preceding the “Stated Maturity”.
Scheduled Trading Day:	“Scheduled Trading Day” as defined in the Indenture.
Automatic Exercise:	As provided under “Exercise on Conversion Dates”.
Exercise Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date (x) prior to the Free Convertibility Period, the second Trading Date immediately following such Conversion Date or (y) during the Free Convertibility Period, the “Business Day” immediately preceding the “Maturity Date”; <i>provided</i> that notwithstanding the foregoing, in the case of an exercise of Options hereunder in respect of a conversion of Relevant Convertible Securities prior to the Free Convertibility Period, such notice (and the related exercise of Options) shall be effective if given after the Exercise Notice

Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Exercise Notice Deadline, in which event the Calculation Agent shall have the right to adjust the Delivery Obligation as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Exercise Notice Deadline.

Notice of Exercise:

Notwithstanding anything to the contrary herein or in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder unless Counterparty notifies Dealer in writing in accordance with the provisions of "Exercise Notice Deadline" above in respect of such exercise of (i) the number of Options being exercised on the relevant Exercise Date, (ii) the scheduled settlement date under the Indenture for the Convertible Securities converted on the Conversion Date corresponding to such Exercise Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" and (iv) the first "Scheduled Trading Day" of the "Cash Settlement Averaging Period", and such notice shall also include the representations and acknowledgments required pursuant to Settlement Method Election Conditions below, if applicable; provided that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities on any Conversion Date occurring during the Free Convertibility Period (as defined below), the contents of such notice shall be solely as set forth in clause (i) above.

Notice of Convertible Security Settlement Method:

Counterparty shall notify Dealer in writing before 5:00 P.M. (New York City time) on April 15, 2018 of the irrevocable election by the Counterparty, in accordance with Section 4.03(a)(iii) of the Supplemental Indenture, of the settlement method and, if applicable, the "Specified Dollar Amount" applicable to Relevant Convertible Securities with a Conversion Date occurring on or after April 15, 2018

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and ending on and including the "Business Day" immediately preceding the "Maturity Date" (the "Free Convertibility Period"). If Counterparty fails timely to provide such notice, Counterparty shall be deemed to have notified Dealer of "Combination Settlement" with a "Specified Dollar Amount" of USD1,000 for all conversions occurring during the Free Convertibility Period.

Settlement Terms:

Settlement Date:

The date one Settlement Cycle following the final day of the relevant "Cash Settlement Averaging Period"; *provided* that the Settlement Date will not be prior to the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 PM, New York City time.

Delivery Obligation:

In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of the aggregate number of Options exercised in respect of any Exercise Date occurring in relation to the relevant Conversion Date, Dealer will deliver to Counterparty, on the related Settlement Date, (a) a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities converted on such Conversion Date pursuant to Section 4.03(a) of the Supplemental Indenture (except that such aggregate number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03 (e) of the Supplemental Indenture and shall be rounded down to the nearest whole number) and (b) an amount of cash in USD equal to the aggregate amount of cash, if any, in excess of USD1,000 per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) pursuant to Section 4.03 (a) of the Supplemental Indenture and cash in lieu of fractional Shares, if any, resulting from such rounding, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Convertible Securities (the "Convertible Obligation"); provided that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a result of any adjustments to the Conversion Rate pursuant to Sections 4.04(f), 4.04(g) or 4.06 of the Supplemental Indenture (the "Excluded Adjustment Provisions") (and, for the avoidance of doubt, the Delivery Obligation shall not include

any interest payment on the Relevant Convertible Securities that the Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date); and provided further that if such exercise relates to the conversion of Relevant Convertible Securities in connection with which holders thereof are entitled to receive additional Shares and/or cash pursuant to the adjustments to the Conversion Rate set forth in Section 4.06 of the Supplemental Indenture, then, notwithstanding the foregoing, the Delivery Obligation shall include such additional Shares and/or cash, except that the Delivery Obligation shall be capped so that the value of the Delivery Obligation per Option (with the value of any Shares included in the Delivery Obligation determined

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by the Calculation Agent using the “Daily VWAP” on the last day of the relevant “Cash Settlement Averaging Period”) does not exceed the amount as determined by the Calculation Agent that would be payable by Dealer pursuant to Section 6 of the Agreement if such Conversion Date were an Early Termination Date resulting from an Additional Termination Event with respect to which the Transaction) was the sole Affected Transaction and Counterparty was the sole Affected Party, determined without regard to Section 8(a) of this Confirmation (except that, for purposes of determining such amount (x) the Number of Options shall be deemed to be equal to the number of Options exercised on such Exercise Date, (y) such amount payable will be determined as if Section 4.06 of the Supplemental Indenture were deleted and (z) the value of any Shares shall be the “Daily VWAP” on the last day of the relevant “Cash Settlement Averaging Period” and consequences of the announcement and occurrence of the event giving rise to the Make-Whole Fundamental Change shall be ignored for all other purposes), and if the Delivery Obligation is so capped, such capped Delivery Obligation shall comprise, first, Shares up to the amount of Shares deliverable under the uncapped Delivery Obligation and then, with respect to any remaining value, cash. Notwithstanding the foregoing, and in addition to the cap described in the further proviso to the preceding sentence, in all events the Delivery Obligation shall be capped so that the value of the Delivery Obligation does not exceed the value of the consideration delivered to holders of such Relevant Convertible Securities in respect of the conversion thereof (with such consideration determined based on the actual settlement method elected by Counterparty with respect to such Relevant Convertible Securities instead of the Convertible Security Settlement Method and with the value of any Shares included in either the Delivery Obligation or such consideration determined by the Calculation Agent using the opening price of the Shares on the Exchange on the Settlement Date) minus USD1,000 per Relevant Convertible Security.

Convertible Security Settlement Method:

For any Relevant Convertible Securities, if Counterparty has (i) notified Dealer in the related Notice of Exercise or in the Notice of Convertible Security Settlement Method, as the case may be, that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares (a “Combination Election”) in accordance with Section 4.03(a)(iii) of the Supplemental Indenture with a “Specified Dollar Amount” of at least USD1,000 and (ii) provided in the related Notice of Exercise or in the Notice of Convertible Security Settlement Method, as the case may be, the representations and the acknowledgment contained in Settlement Method Election Conditions below, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall (i) assume Counterparty had made a Combination Election with respect to such Relevant Convertible Securities with a “Specified Dollar Amount” of USD1,000 per Relevant Convertible Security and (ii) be calculated as if the relevant “Cash Settlement Averaging Period” pursuant to Section 1.02 of the Indenture consisted of 40 “Trading Days” commencing on (x) the third “Scheduled Trading Day” after the Conversion Date for conversions occurring prior to the Free Convertibility Period or (y) the 42nd “Scheduled Trading Day” prior to the “Maturity Date” for conversions occurring during the Free Convertibility Period (and such extended “Cash Settlement Averaging Period” shall be deemed to be the

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relevant “Cash Settlement Averaging Period” for all purposes hereunder).

Settlement Method Election Conditions:

(i) A representation that, on the date of such Notice of Exercise or Notice of Convertible Security Settlement Method, as applicable, Counterparty is not in possession of any

material non-public information with respect to Counterparty or the Shares.

(ii) A representation that Counterparty is electing the settlement method for the Relevant Convertible Securities and such Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

(iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction;

(iv) a representation that Counterparty is not electing the settlement method for the Relevant Convertible Securities and such Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares); and

(v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty’s election of the settlement method for the Relevant Convertible Securities and such Convertible Security Settlement Method shall be made at Dealer’s sole discretion and for Dealer’s own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation:

No later than the Exchange Business Day immediately following the last day of the relevant “Cash Settlement Averaging Period” Counterparty shall give Dealer notice of the final number of Shares and/or cash comprising the Convertible Obligation; *provided* that, with respect to any Exercise Date occurring during the Free Convertibility Period, Counterparty may provide Dealer with a single notice of an aggregate number of Shares and/or amount of cash comprising the Convertible Obligations for all Exercise Dates occurring in such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty’s obligations with respect to Notice of Exercise or Notice of Convertible Security Settlement Method or Dealer’s obligations with respect to Delivery Obligation, each as set forth above, in any way).

Other Applicable Provisions:

To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity

Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the Issuer of the Shares) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction.

Restricted Certificated Shares:

Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word “encumbrance” in the fourth line thereof.

Share Adjustments:

Method of Adjustment:

Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Sections 4.04, 4.05 and 4.12 of the Indenture (an “**Adjustment Event**”) that results in an adjustment under the Indenture (other than pursuant to the Excluded Adjustment Provisions), the Calculation Agent shall make a corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction. Immediately upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall immediately notify the Calculation Agent in writing of the details of such adjustments.

Notwithstanding anything to the contrary herein, if Counterparty or its board of directors is permitted or required to exercise discretion under the terms of the Indenture with respect to any determination, calculation or adjustment (including, without limitation, any adjustment under Section 4.05 of the Supplemental Indenture, any adjustment to the terms of a Merger Supplemental Indenture or any the volume weighted average price of Shares) (any such determination, calculation or adjustment, an “**Indenture Determination**”) other than a determination of the fair market value of distributed property or the value of a “unit of Reference Property” (any such determination, a “**Value Determination**”, and together with Indenture Determination, each a “**Counterparty Determination**”), if the Calculation Agent determines in good faith and commercially reasonable manner that (a) any such Indenture Determination was made subject to manifest error or (b) any Value Determination is materially incorrect, the Calculation Agent shall make the relevant determination, calculation or adjustment for purposes of the Transaction and, for the avoidance of doubt, shall determine any Delivery Obligation and Settlement Date thereafter as if the Calculation Agent’s determination, calculation or adjustment was applicable under the Indenture.

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For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any “Distributed Property” delivered by Counterparty pursuant to the third sentence of Section 4.04(c) of the Supplemental Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the fourth sentence of Section 4.04(d) of the Supplemental Indenture (collectively, the “**Conversion Rate Adjustment Fallback Provisions**”), and no adjustment shall be made to the terms of the Transaction on account of any event or condition described in the Conversion Rate Adjustment Fallback Provisions.

Extraordinary Events:

Merger Events:

Notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in Section 4.07 of the Indenture.

Notice of Merger Consideration:

Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but, in any event prior to the relevant merger date) notify the Calculation Agent of (i) the weighted average of the types and amounts of consideration received by the holders of Shares entitled to receive cash, securities or other property or assets with respect to or in exchange for such Shares in any Merger Event who affirmatively make such an election and (ii) the details of the adjustment made under the Indenture in respect of such Merger Event. In addition, Counterparty shall deliver a copy of the supplemental indenture effecting such adjustments (a “**Merger Supplemental Indenture**”) as required under the Indenture as promptly as practicable following execution thereof.

Consequences of Merger Events:

Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, upon the occurrence of a Merger Event that results in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment to the terms relevant to the exercise, settlement or payment of the Transaction, subject to the provision under “Method of Adjustment” above relating to Counterparty Determinations; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to the Excluded Adjustment Provisions; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this paragraph so that the fair value of the Transaction to Dealer is not reduced as a result of the level of trading characteristics related to the consideration received pursuant to such Merger Event, that if, with respect to a Merger Event, the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any State thereof or the District of Columbia, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s sole discretion.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity

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Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by inserting the parenthetical “(including, for the avoidance of doubt and without limitation, adoption, effectiveness or promulgation of regulations authorized or mandated by existing statute)” at the end of clause (A) thereof, (ii) by the replacement of the word “Shares” with “Hedge Positions” in clause (X) thereof; and “(iii) by replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”; *provided further* that Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

The parties agree that, for the avoidance of doubt, for purposes of Section 12.9(a)(ii) of the Equity Definitions, “any applicable law or regulation” and for purposes of Section 5 (b)(i) of the Agreement, “any applicable law”, shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation (collectively, the “**Wall Street Act**”), and the consequences specified in Section 12.9(b)(i) of the Equity Definitions shall apply to any Change in Law or Illegality, as the case may be, arising from any such act, rule or regulation. The foregoing constitutes a specific reservation for purposes of the Wall Street Act.

Failure to Deliver:

Applicable

Insolvency Filing:

Applicable

Hedging Disruption:

Applicable; *provided* that:

- (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by inserting the following two phrases at the end of such Section:

“For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing

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terms.”; and

- (ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.

Increased Cost of Hedging:

Applicable

Hedging Party:

For all applicable Potential Adjustment Events and Extraordinary Events, Dealer

Determining Party:

For all applicable Extraordinary Events, Dealer

Acknowledgements:

Non-Reliance:

Applicable

Agreements and Acknowledgements
Regarding Hedging Activities:

Applicable

Additional Acknowledgements:

Applicable

3. Calculation Agent:

Dealer, whose judgments, determinations and calculations shall be made in good faith

and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

Dealer Payment Instructions:

Royal Bank of Canada

ABA: 021000021

JP Morgan Chase NY (CHASUS33)

A/C Royal Bank of Canada, NY Branch (ROYCUS3X)

A/C#: 920-1-033363

FFC A/C Name: RBC US Transit

Beneficiary A/C: 012692041499

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5. Offices:

The Office of Dealer for the Transaction is: New York

Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281

The Office of Counterparty for the Transaction is: Not Applicable

6. Notices:

For purposes of this Confirmation:

Address for notices of communications to Counterparty:

To: David Grawemeyer
151 Detroit Street
Denver, CO 80206
David.grawemeyer@janus.com
303-336-5053

with a copy to:

John Groneman
151 Detroit Street
Denver, CO 80206
John.groneman@janus.com
303-336-7466

Any notice or other communication required or permitted to be given to Dealer (for matters other than operational matters) with respect to this Confirmation shall be delivered in person or given by facsimile transmission to Dealer at the following address:

To: Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281

Attn: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053
Email: SEDDOC@rbccm.com

Any notice or other communication concerning operational matters should be sent by

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date, and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(a) below, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange

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Commission pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties with respect to the treatment of the Transaction under ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, ASC Topic 480, Distinguishing Liabilities from Equity and ASC Topic 815-40, Derivatives and Hedging — Contracts in Entity's Own Equity (or any successor issue statements), or under any other accounting guidance.

(iii) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction and such other certificate or certificates as Dealer shall reasonably request.

(iv) Counterparty is not entering into this Confirmation, and will not make any election hereunder, to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(v) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(vi) On each of the Trade Date and the Premium Payment Date, Counterparty is not, or will not be, "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase 10,734,357 Shares in compliance with the corporate laws of the jurisdiction of its incorporation.

(vii) The representations and warranties of Counterparty set forth in Article III of an Exchange Agreement dated as of June 14, 2013, between the Counterparty and a holder of the Counterparty's 3.25% Convertible Senior Notes due 2014 (the "**Exchange Agreement**") are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein.

(viii) Counterparty understands no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency.

(ix) (A) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction.

(x) Counterparty (i) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (iii) has total assets of at least \$50 million as of the date hereof.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended.

(c) Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(2)

thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Counterparty agrees and acknowledges that Dealer is a “financial institution,” “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of Title 11 of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555 and 560 of the Bankruptcy Code.

(e) It is the intent of the parties that, in respect of Counterparty, (a) the Transaction shall constitute a “qualified financial contract” within the meaning of 12 U.S.C. Section 1821(e)(8)(D)(i) and (b) a Non-defaulting Party’s rights under Sections 5 and 6 of the Agreement constitute rights of the kind referred to in 12 U.S.C. Section 1821(e)(8)(A).

(f) Counterparty shall deliver to Dealer an opinion of counsel reasonably acceptable to Dealer, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement and such other matters as Dealer may reasonably request.

8. Miscellaneous:

(a) *Alternative Calculations and Dealer Payment on Early Termination and on Certain Extraordinary Events.* If Dealer shall owe Counterparty any amount pursuant to “Consequences of Merger Events” above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Share Termination**”); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event of (i) an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash or (ii) an Event of Default, a Termination Event or an Extraordinary Event, in each case, which resulted from an event or events within Counterparty’s control. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative: Applicable and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to “Consequences of Merger Events” above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the “**Share Termination Payment Date**”), in satisfaction of the Payment Obligation.

Share Termination Delivery

Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10, 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units.”

(b) *Payment by Counterparty.* In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default of the type described in Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount pursuant to Section 6 of the Agreement, or (ii) Counterparty owes to Dealer an amount pursuant to Article 12 of the Equity Definitions (including, for the avoidance of doubt, any amount payable in connection with an Extraordinary Event), such amount shall be deemed to be zero.

(c) *Additional Termination Events.* The occurrence of an Amendment Event that results in a material adverse change to the value of this Transaction to Dealer shall be an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. For the avoidance of doubt, the relevant Early Termination Amount in respect of an Amendment Event shall be calculated without giving effect to the related amendment, modification, supplement or waiver.

“**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty (if any), any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the consent of Dealer; *provided* that entry into a Merger Supplemental Indenture shall not constitute an Amendment Event.

If the Amendment Event does not result in an Additional Termination Event, (x) the Calculation Agent shall determine the relevant Delivery Obligation and Settlement Date for any Option exercised thereafter in accordance with this Confirmation by referring to the relevant provisions of the Indenture without giving effect to such amendment or supplement and (y) such supplement or amendment shall be disregarded for all other purposes hereunder, unless the parties agree otherwise in writing.

(d) *Dividends.* If at any time during the period from and including the Effective Date, to but excluding the Expiration Date, (i) an ex-dividend date for a regular quarterly cash dividend occurs with respect to the Shares (an “**Ex-Dividend Date**”), and that dividend is less than the Regular Dividend on a per Share basis or (ii) if no Ex-Dividend date for a regular quarterly cash dividend occurs with respect to the Shares in any quarterly dividend period of Counterparty, then the Calculation Agent will make a corresponding adjustment to any one or more of the Number of Options, Conversion Rate and/or any other variable relevant to the exercise, settlement or payment for the Transaction to preserve the fair value of the Options to Dealer after taking into account such dividend or lack thereof. “**Regular Dividend**” shall mean USD 0.07 per Share per quarter. Upon any adjustment to the Initial Dividend Threshold (as defined in the Indenture) for the Convertible Notes pursuant to Section 4.04(d) or Section 4.07 of the Indenture, the Calculation Agent will make a corresponding adjustment to the Regular Dividend for the Transaction.

(e) *Disposition of Hedge Shares.* Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, any Shares (the “**Hedge Shares**”) acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be freely sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering, (B) provide accountant’s “comfort” letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a “due diligence” investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(e) shall apply at

the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the “Daily VWAP” on such Exchange Business Days, and in the amounts, requested by Dealer.

(f) *Repurchase and Conversion Rate Adjustment Notices.* Counterparty shall, at least 10 Scheduled Trading Days prior to effecting any repurchase of Shares or consummating or otherwise executing or engaging in any transaction or event (a “**Conversion Rate Adjustment Event**”) that would lead to an increase in the Conversion Rate (as such term is defined in the Indenture), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a “**Repurchase Notice**”) if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage as determined on the date of such Repurchase Notice will be greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof (calculated as if this Transaction had been entered into as of such date)). The “**Notice Percentage**” as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(f), then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an “**Indemnified Party**”) from and against any and all losses, claims, damages and liabilities (or actions in

respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(g) *Covenant to Notify of Potential Adjustment Event, Merger Event or any other Extraordinary Event.* Counterparty covenants to provide written notice to Dealer upon obtaining knowledge of the occurrence of any event that would constitute a Potential Adjustment Event, a Merger Event or any other Extraordinary Event; *provided* that should Counterparty be in possession of material non-public information regarding Counterparty, Counterparty shall not communicate such information to Dealer.

(h) *Rule 10b-18.*

(i) Except as disclosed to Dealer in writing prior to the date on which the offering of the Convertible Securities was first announced, Counterparty represents and warrants to Dealer that it has not made any purchases of blocks by or for itself or any of its Affiliated Purchasers pursuant to the one block purchase per week exception in Rule 10b-18(b)(4) under the Exchange Act during each of the four calendar weeks preceding such date (“**Rule 10b-18 purchase**,” “**blocks**” and “**Affiliated Purchaser**” each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”). Counterparty agrees and acknowledges that it shall not, and shall cause its affiliates and Affiliated Purchasers not to, directly or indirectly (including by means of a derivative instrument) enter into any transaction to purchase any Shares during the period beginning on such date and ending on the day on which Dealer has informed Counterparty in writing that it has completed all purchases of Shares to hedge initially its exposure to the Transaction.

(ii) On any day during any “Cash Settlement Averaging Period”, neither Counterparty nor any “affiliate” or “affiliated purchaser” (each as defined in Rule 10b-18) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer.

(iii) Counterparty agrees that it (A) will not, on any day during any “Cash Settlement Averaging Period,” make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty’s average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the

number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. “**Merger Transaction**” means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(iv) During the Hedge Period, Dealer agrees to use commercially reasonable efforts to make all purchases of Shares in a manner that would comply with the limitations set forth in clauses (b)(1),(b)(2), (b)(3), (b)(4) and (c) of Rule 10b-18, as if such rule was applicable to such purchases.

(i) *Regulation M.* (x) Counterparty (A) was not on the date on which the offering of the Convertible Securities was first announced, has not since such date to the date hereof, and is not on the date hereof, engaged in a distribution, as such term is used in Regulation M under the Exchange Act, of any securities of Counterparty, other than the distribution of the Convertible Securities and (B) shall not engage in any “distribution,” as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date, and (y)(A) on any day during any “Cash Settlement Averaging Period,” the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a “restricted period,” as defined in Regulation M and (B) Counterparty shall not engage in any “distribution,” as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such “Cash Settlement Averaging Period.”

(j) *Transfer or Assignment.* Either party may transfer any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, Dealer may condition its consent on any of the following, without limitation: (i) the receipt by Dealer of opinions and documents reasonably satisfactory to Dealer in connection with such assignment, (ii) such assignment being effected on terms reasonably satisfactory to Dealer with respect to any legal and regulatory requirements relevant to Dealer, (iii) the transferee being a United States person (as defined in the Internal Revenue Code of 1986, as amended), (iv) that, in Dealer’s reasonable determination, Dealer will not be required, as a result of such transfer, to pay the transferee an amount under Section 2(d)(i)(4) of the Agreement greater than the amount, if any, that Dealer would have been required to pay to Counterparty in the absence of such transfer, (v) that, in Dealer’s reasonable determination, no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and (vi) Counterparty continuing to be obligated to provide notices hereunder relating to the Convertible Securities and continuing to be obligated with respect to “Disposition of Hedge Shares” and “Repurchase and Conversion Rate Adjustment Notices” above. In addition, Dealer may transfer or assign without any consent of the Counterparty its rights and obligations hereunder and under the Agreement (1) in whole or in part to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date, (2) in whole or in part to any other affiliate of Dealer with respect to which Counterparty shall have received a full guaranty of such affiliate’s obligations from Dealer in form and substance reasonably satisfactory to Counterparty or (3) if at the time of such transfer or assignment an Excess Ownership Position exists, in part to any other third party with a rating for its long term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (I) the credit rating of Dealer at the time of the transfer and (II) A- by Standard and Poor’s Rating Group, Inc. or its successor (“**S&P**”), or A3 by Moody’s Investor Service, Inc. (“**Moody’s**”) or, if either S&P or Moody’s ceases to rate such debt, at least an equivalent or better rating by a substitute rating agency mutually agreed by Counterparty and Dealer, in the case of this clause (3), to the minimum extent required such that an Excess Ownership Position no longer exists after giving effect to such partial transfer or assignment, in each case of the immediately preceding clauses (1), (2) and (3), only if an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment. At any time at which any Excess Ownership Position exists, if Dealer, in its discretion, is unable to effect a transfer or assignment to a third party in accordance with the requirements set forth above after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of the Transaction, such that such Excess Ownership Position no longer exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(a) of this Confirmation as if (i) an Early Termination Date had been designated in respect of an Additional Termination Event under a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (iii) the Terminated Portion of the Transaction shall be the only Terminated Transaction. “**Excess Ownership Position**” means any of the following: (i) the Equity Percentage exceeds 9.0%, (ii) Dealer or any “affiliate” or “associate” of Dealer would own in excess of 13.0% of the outstanding Shares for purposes of Section 203 of the Delaware General Corporation Law or (iii) Dealer, Dealer

Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a “**Dealer Person**”) under any federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares (“**Applicable Laws**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to

which Counterparty is a party, as reasonably determined by Dealer, in each case minus (y) 1% of the number of Shares outstanding on the date of determination. The “**Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer, for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act, or of any “group” (within the meaning of Section 13) of which Dealer is or may be deemed to be a part (Dealer and any such affiliates, persons and groups, collectively, “**Dealer Group**”), beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day and (B) the denominator of which is the number of Shares outstanding on such day.

(k) *Staggered Settlement.* If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares on two or more dates (each, a “Staggered Settlement Date”) or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the beginning of the related “Cash Settlement Averaging Period” or delivery times and how it will allocate the Shares it is required to deliver under “Delivery Obligation” (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(l) *Right to Extend.* Dealer may postpone any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation) if Dealer determines, in its reasonable discretion, that such extension is reasonably necessary or appropriate to preserve Dealer’s hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the cash market, the stock loan market or any other relevant market.

(m) *No Netting and Set-off.* Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(n) *Status of Claims in Bankruptcy.* Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders or Counterparty in the event of Counterparty’s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty’s bankruptcy.

(o) *No Collateral.* Notwithstanding any provision of this Confirmation, the Agreement, the Equity Definitions or any other agreement between the parties to the contrary, the obligations of Counterparty under the Transaction are not secured by any collateral.

(p) *Disclosure.* Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

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(q) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Counterparty, such delivery shall be effected through RBCCM. In addition, all notices, demands and communications of any kind relating to the Transaction between Dealer and Counterparty shall be transmitted exclusively through RBCCM.

(r) *Agreements and Acknowledgments Regarding Hedging.* Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the “Daily VWAP”; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the “Daily VWAP”, each in a manner that may be adverse to Counterparty.

(s) *Early Unwind.* In the event the exchange by Counterparty of the Existing Notes for the New Notes (each as defined in each Exchange Agreement) is not consummated with each Holder (as defined in the Exchange Agreement) pursuant to the Exchange Agreement for any reason by the close of business in New York on June 19, 2013 (or such later date as agreed upon by the parties) (June 19, 2013 or such later date being the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”) on the Early Unwind Date and (x) the Transaction and all of the respective rights and obligations of Dealer and Counterparty thereunder shall be cancelled and terminated and (y) Counterparty shall assume, or reimburse the cost of, derivatives and other hedging activities

entered into by Dealer or one or more of its affiliates in connection with hedging the Transaction and the unwind of such hedging activities, and purchase any Shares purchased by Dealer or one or more of its affiliates in connection with hedging the Transaction at the cost at which Dealer or such affiliates purchased such Shares. Following such termination, cancellation and payment, subject to the preceding sentence, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date.

(t) *Severability; Illegality.* Notwithstanding anything to the contrary in the Agreement, if compliance by either party with any provision of the Transaction would be unenforceable or illegal, (a) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (b) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(u) *Waiver of Jury Trial.* **EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.**

(v) *Governing law; Jurisdiction.* **THIS CONFIRMATION AND THE TRADE NOTIFICATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION AND THE TRADE NOTIFICATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.**

This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at (212) 428-3053. Originals shall be provided for your execution upon your request.

We are very pleased to have executed the Transaction with you and we look forward to completing other transactions with you in the near future.

Very truly yours,

ROYAL BANK OF CANADA
by its agent
RBC Capital Markets, LLC

By: /s/ Alex Rabaev
Name: Alex Rabaev
Title: Associate Director

Counterparty hereby agrees to, accepts and confirms the terms of the foregoing as of the Trade Date.

JANUS CAPITAL GROUP INC.

By: /s/ Bruce Koepfgen
Name: Bruce Koepfgen
Title: Executive Vice President and Chief Financial Officer

SCHEDULE A

SCHEDULE B

Section 5: EX-10.3 (EX-10.3)

Exhibit 10.3



RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281
Telephone: (212) 858-7000

DATE: June 14, 2013

TO: Janus Capital Group Inc.
ATTENTION: David Grawemeyer
TELEPHONE: (303) 336-5053

FROM: RBC Capital Markets, LLC
as agent for
Royal Bank of Canada

TELEPHONE: (212) 858-7000
FACSIMILE: (212) 428-3053

SUBJECT: Issuer Warrant Transaction

REFERENCE NUMBER(S): JNS-E2-C1

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between **Royal Bank of Canada** ("**Dealer**") and Janus Capital Group Inc. ("**Issuer**"). The additional terms of the Transaction are as set forth in the Trade Notification in the form of Schedule A hereto (the "**Trade Notification**"), which shall reference this Confirmation and supplement, form a part of, and be subject to this Confirmation. This communication, as supplemented by the Trade Notification, constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

Disclosure of Agency Relationship

Dealer has appointed, as its agent, its indirect wholly-owned subsidiary, RBC Capital Markets, LLC ("**RBCCM**"), for purposes of conducting, on Dealer's behalf, a business in privately negotiated transactions in options and other derivatives. You hereby are advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized RBCCM to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products.

1. This Confirmation and the Trade Notification are subject to, and incorporate, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the "**2000 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), and together with the 2000 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern. For purposes of the Equity Definitions, each reference herein to a Warrant shall be deemed to be a reference to a Call Option or an Option, as context requires.

This Confirmation, as supplemented by the Trade Notification, evidences a complete and binding agreement between Dealer and Issuer as to the terms of the Transaction to which this Confirmation, as supplemented by the Trade Notification, relates. This Confirmation and the Trade Notification shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement as if Dealer and Issuer had executed an agreement in such form (without any Schedule except for (i) the election of US Dollars ("**USD**") as the Termination Currency and (ii) the election that the "Cross Default" provisions of Section 5(a)(vi) of the Agreement will apply to Dealer and to Counterparty with (x) the phrase " , or becoming capable at such time of being declared," deleted from Section 5(a)(vi)(1) of the Agreement and (y) the "Threshold Amount" with respect to Dealer being three percent (3%) of shareholders' equity of Royal Bank of Canada as of the Trade Date and with respect to Counterparty, USD 50.0 million). For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement.

All provisions contained in, or incorporated by reference in, the Agreement will govern this Confirmation and the Trade Notification except as expressly modified herein. In the event of any inconsistency between this Confirmation, the Trade Notification and either the Definitions or the Agreement, the following will prevail for purposes of the Transaction in order of precedence indicated: (i) the Trade Notification, (ii) this Confirmation, (iii) the Definitions, (iv) the Agreement (without regard to the Trade Notification and the Confirmation). For the avoidance of doubt, except to the extent of an express conflict, the application of any provision of this Confirmation, the Trade Notification, the Definitions or the Agreement, shall not be construed to exclude or limit the application of any other provision of this Confirmation, the Trade Notification, the

Definitions or the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General:

Trade Date: June 14, 2013

Effective Date: June 14, 2013, or such other date as agreed between the parties, subject to Section 8 (a) below

Components: The Transaction will be divided into individual Components, each with the terms set forth in this Confirmation, and, in particular, with the Number of Warrants and Expiration Date set forth in this Confirmation. The payments and deliveries to be made upon settlement of the Transaction will be determined separately for each Component as if each Component were a separate Transaction under the Agreement.

Warrant Style: European

Warrant Type: Call

Seller: Issuer

Buyer: Dealer

Shares: The common stock of Issuer, par value USD0.001 per share (Ticker Symbol: "JNS").

Number of Warrants: For each Component, as provided in Annex A to this Confirmation. For the avoidance of doubt, the Number of Warrants shall be reduced by any Warrants exercised or deemed exercised hereunder. In no event will the Number of Warrants be less than zero.

Warrant Entitlement: One Share per Warrant

Strike Price: USD \$12.601

Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than the Hedge Period Reference Price, except for any adjustment in connection with stock splits or similar changes to Issuer's capitalization.

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Hedge Period Reference Price: As specified in the Trade Notification, to be the average of the VWAP Prices for the Exchange Business Days during the period beginning on the Trade Date and ending on the day on which Dealer has informed Counterparty that Dealer has completed all hedging activities and transactions necessary in order to hedge initially its exposure with respect to the Transaction (the "**Hedge Period**").

Premium: As specified in the Trade Notification, to be determined by reference to the table set forth in Schedule B and based on the Hedge Period Reference Price. If the exact Hedge Period Reference Price does not appear in such table, the Premium shall be determined by linear interpolation or extrapolation using the two closest Hedge Period Reference Prices appearing in such table.

Premium Payment Date: As specified in the Trade Notification, to be the third Currency Business Day following the last day of the Hedge Period.

Exchange: New York Stock Exchange

Related Exchanges: All Exchanges

Procedures for Exercise:

In respect of any Component:

Expiration Date: As provided in Annex A to this Confirmation (or, if such date is not a Scheduled Trading

Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Component); *provided* that if that date is a Disrupted Day, the Expiration Date for such Component shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Component of the Transaction hereunder; and *provided further* that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, Dealer may elect in its discretion that the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Component for the Transaction) and, notwithstanding anything to the contrary in this Confirmation or the Definitions, the Relevant Price for such Expiration Date shall be the prevailing market value per Share determined by the Calculation Agent in a commercially reasonable manner. “**Final Disruption Date**” means the eighth Scheduled Trading Day following the Expiration Date for the Component with the latest Expiration Date, determined without regard to the provisos to the preceding sentence. Notwithstanding the foregoing and anything to the contrary in the Equity Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case (i) the Calculation Agent shall make adjustments to the Number of Warrants for the relevant Component for which such day shall be the Expiration Date and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Warrants for such Component, and (ii) the VWAP Price for such Disrupted Day shall be determined by the Calculation Agent based on transactions in the Shares on such Disrupted Day taking into account the nature and duration of such Market Disruption Event on such day. Any Scheduled Trading Day on which, as of the

date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled following the date hereof, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date occurring on an Expiration Date.

Automatic Exercise:

Applicable; and means that the Number of Warrants for each Component will be deemed to be automatically exercised at the Expiration Time on the Expiration Date for such Component unless Dealer notifies Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur, in which case Automatic Exercise will not apply.

Market Disruption Event:

Section 6.3(a) of the Equity Definitions is hereby amended (A) by deleting the words “during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be,” in clause (ii) thereof and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption:

Any event that Dealer, in good faith and in its commercially reasonable discretion, upon advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures, for Dealer to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Issuer as soon as reasonably practicable that a Regulatory Disruption has occurred and the Expiration Dates affected by it.

Settlement Terms:

In respect of any Component:

Settlement Currency:

USD

Settlement Method Election:

Applicable; provided that (i) references to “Physical Settlement” in Section 7.1 of the Equity Definitions shall be replaced by references to “Net Share Settlement”; (ii) Issuer may elect Cash Settlement only if Issuer represents and warrants to Dealer in writing on the date of such election that (A) Issuer is not in possession of any material non-public information regarding Issuer or the Shares, (B) Issuer is electing Cash Settlement in good

faith and not as part of a plan or scheme to evade compliance with the federal securities laws, and (C) the assets of Issuer at their fair valuation exceed the liabilities of Issuer (including contingent liabilities), and Issuer has the ability to pay its debts and obligations as such debts mature; and (iii) the same election of settlement method shall apply to all Expiration Dates hereunder.

Electing Party: Issuer

Settlement Method Election Date: The third Scheduled Trading Day immediately preceding the scheduled First Expiration Date.

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Default Settlement Method: Net Share Settlement

Net Share Settlement: In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, for each Component, Issuer shall deliver to Dealer on the relevant Settlement Date a number of Shares equal to the Number of Shares to be Delivered for such Component to the account specified by Dealer and cash in lieu of any fractional Share valued at the Relevant Price on the Valuation Date corresponding to such Settlement Date, subject to the provisions set forth under “Registration/Private Placement Procedures” below.

Number of Shares to be Delivered: In respect of any Exercise Date, subject to the last sentence of Section 9.5 of the Equity Definitions, the Net Share Settlement Amount *divided* by the VWAP Price.

The Number of Shares to be Delivered shall be delivered by Issuer to Dealer no later than 5:00 P.M. (local time in New York City) on the relevant Settlement Date.

Net Share Settlement Amount: The product of (i) the number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Warrant Entitlement and (iii) the excess, if any, of the VWAP Price on the relevant Valuation Date over the Strike Price.

Cash Settlement: If Cash Settlement is applicable, on the relevant Settlement Date, Issuer shall pay to Dealer an amount of cash in USD equal to the Net Share Settlement Amount for such Settlement Date.

VWAP Price: For any Valuation Date or Exchange Business Day during the Hedge Period, the Rule 10b-18 dollar volume weighted average price per Share for such Valuation Date or Exchange Business Day based on transactions executed during such Valuation Date or Exchange Business Day, as reported on Bloomberg Page “JNS <Equity> AQR” (or any successor thereto) or, if such price is not so reported or is manifestly incorrect, as determined by the Calculation Agent using a volume weighted method.

Other Applicable Provisions: The provisions of Sections 9.1(c), 9.8, 9.9, 9.11 (except that, with respect to any Private Placement Settlement, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Seller is the Issuer of the Shares) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction.

Dividends:

Extraordinary Dividend: Any Dividend that has an ex-dividend date occurring on or after the Trade Date and on or prior to the date on which Issuer satisfies all of its delivery obligations hereunder.

Dividend: Any dividend, other than a Regular Dividend, or distribution on the Shares (other than any dividend or distribution of the type described in Sections 11.2(e)(i), 11.2(e)(ii)(A) or 11.2(e)(ii)(B) of the Equity Definitions).

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Regular Dividend: A regular quarterly dividend of up to USD 0.07 per Share per quarterly dividend period of Issuer.

Adjustments:

Method of Adjustment: Calculation Agent Adjustment; *provided* that adjustments may be made to account for

changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Shares.

Extraordinary Events:

New Shares:

In the definition of New Shares in Section 12.1(i) of the Equity Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word “and” following such clause (i)) and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors).”

Modified Calculation Agent Adjustment:

If, in respect of any Merger Event to which Modified Calculation Agent Adjustment applies, the adjustments to be made in accordance with Section 12.2(e)(i) of the Equity Definitions would result in Issuer being different from the issuer of the Shares, then with respect to such Merger Event, as a condition precedent to the adjustments contemplated in Section 12.2(e)(i) of the Equity Definitions, Dealer, the Issuer of the Affected Shares and the entity that will be the Issuer of the New Shares shall, prior to the Merger Date, have entered into such documentation containing representations, warranties and agreements relating to securities law and other issues as requested by Dealer that Dealer has determined, in its reasonable discretion, to be reasonably necessary to allow Dealer to continue as a party to the Transaction, as adjusted under Section 12.2(e)(i) of the Equity Definitions, and to preserve its hedging or hedge unwind activities in connection with the Transaction in a manner compliant with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer, and if such conditions are not met or if the Calculation Agent determines that no adjustment that it could make under Section 12.2(e)(i) of the Equity Definitions will produce a commercially reasonable result, then the consequences set forth in Section 12.2(e)(ii) of the Equity Definitions shall apply.

Announcement Event:

With respect to any Component, if an Announcement Event occurs, the Calculation Agent will determine the economic effect of the Announcement Event on the theoretical value of such Component (i) on or after the relevant Announcement Date and (ii) on the Valuation Date or any earlier date of termination or cancellation for such Component (in each case, which may include, without limitation, any actual or expected change in volatility, dividends, correlation, stock loan rate or liquidity relevant to the Shares or to such Component), if, in the case of clause (i) or (ii), such economic effect is material, the Calculation Agent may (x) adjust the terms of such Component to reflect such economic effect and (y) determine the effective date of such adjustment. “**Announcement Event**” shall mean the occurrence of an Announcement Date in respect of a Merger Event (for the avoidance of doubt, determined without regard to the language in the definition of “Merger Event” following the definition of “Reverse Merger” therein) or Tender Offer, notwithstanding the fact that such Merger Date or Tender Offer Date may not, or may not be anticipated

to, occur on or prior to the Valuation Date for the related Component. The definition of “**Announcement Date**” in Section 12.1(l) of the Equity Definitions shall be amended by (a) replacing the word “leads” in the third line thereof and in the fifth line thereof with the words “could lead (as determined by the Calculation Agent)”, (b) deleting the word “firm” in the second and fourth lines thereof (c) replacing the words “voting shares” in the fifth line thereof with the word “Shares”, (d) inserting the words “by any entity” after the word “announcement” in the second and the fourth lines thereof, (e) inserting the words “or to explore the possibility of engaging in” after the words “engage in” in the second line thereto, (f) inserting the words “or to explore the possibility of purchasing or otherwise obtaining” after the word “obtain” in the fourth line thereto and (g) inserting the words “, and any publicly announced change or amendment to such an announcement (including the announcement of an abandonment of such intention)” at the end of clauses (i) and (ii) thereof, .

Consequences of Merger Events:

(a) Share-for-Share:

Modified Calculation Agent Adjustment

(b) Share-for-Other:

Cancellation and Payment (Calculation Agent Determination)

(c) Share-for-Combined:

Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment.

Tender Offer:	Applicable; provided, however, the reference to “10%” in the definition thereof shall be replaced by a reference to “20%.”
Consequences of Tender Offers:	
(a) Share-for-Share:	Modified Calculation Agent Adjustment
(b) Share-for-Other:	Modified Calculation Agent Adjustment
(c) Share-for-Combined:	Modified Calculation Agent Adjustment
Composition of Combined Consideration:	Notwithstanding anything to the contrary in the Equity Definitions, if the holder of Shares would have more than one choice with respect to that portion of the composition of Combined Consideration that is other than New Shares in respect of any Share-for-Combined Merger Event or Tender Offer, Dealer shall determine the composition of such Combined Consideration that is other than New Shares in its sole discretion.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); <i>provided</i> that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; <i>provided</i> that Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by inserting the parenthetical “(including, for the avoidance of doubt and without limitation, adoption, effectiveness or promulgation of regulations authorized or mandated by existing statute)” at the end of clause (A) thereof, (ii) by the replacement of the word “Shares” with “Hedge Positions” in clause (X) thereof; “(iii) by replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”; <i>provided further</i> that Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Issuer” in the first sentence of such section. The parties agree that, for the avoidance of doubt, for purposes of Section 12.9(a)(ii) of the Equity Definitions, “any applicable law or regulation” and for purposes of Section 5 (b)(i) of the Agreement, “any applicable law”, shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation (collectively, the “ Wall Street Act ”), and the consequences specified in Section 12.9(b)(i) of the Equity Definitions shall apply to any Change in Law or Illegality, as the case may be, arising from any such act, rule or regulation. The foregoing constitutes a specific reservation for purposes of the Wall Street Act.
Insolvency Filing:	Applicable
Loss of Stock Borrow:	Applicable; <i>provided</i> that Sections 12.9(a)(vii) and 12.9(b)(iv) of the Equity Definitions are amended by deleting the words “at a rate equal to or less than the Maximum Stock Loan Rate” and replacing it with the words “at a Borrow Cost equal to or less than the Maximum Stock Loan Rate”.
Borrow Cost	The cost to borrow the relevant Shares that would be incurred by a third party market participant borrowing such Shares, as determined by the Calculation Agent on the relevant date of determination. Such costs shall include (a) the spread below FED-FUNDS that would be earned on collateral posted in connection with such borrowed Shares, net of any costs or fees, and (b) any stock loan borrow fee that would be payable for such Shares, expressed as fixed rate per annum.
Maximum Stock Loan Rate:	100 basis points per annum
Increased Cost of Stock Borrow:	Applicable; <i>provided</i> that (a) Section 12.9(a)(viii) of the Equity Definitions shall be

amended by deleting “rate to borrow Shares” and replacing it with “Borrow Cost” and (b) Section 12.9(b)(v) of the Equity Definitions shall be amended by (i) adding the word “or” immediately before the phrase “(B)”, (ii) deleting subsection (C) in its entirety, (iii) replacing “either party” in the penultimate sentence with “the Hedging Party”, and (iv) replacing the word “rate” in clauses (X) and (Y) of the final sentence therein with the words “Borrow Cost”.

Initial Stock Loan Rate: 25 basis points per annum

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FED FUNDS: “FED FUNDS” means ,for any day, the rate set forth for such day opposite the caption “Federal funds”, as such rate is displayed on the page “FedsOpen <Index> <GO>“ on the BLOOMBERG Professional Service, or any successor page; *provided* that if no rate appears for any day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.

Increased Cost of Hedging: Applicable

Hedging Disruption: Applicable; *provided* that:

- (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (b) inserting the following two phrases at the end of such Section:

“For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”; and

- (ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.

Hedging Party: Dealer for all applicable Potential Adjustment Events and Extraordinary Events

Determining Party: Dealer for all applicable Extraordinary Events

Acknowledgements:

Non-Reliance: Applicable

Agreements and Acknowledgements

Regarding Hedging Activities: Applicable

Additional Acknowledgements: Applicable

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

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4. Account Details: Dealer Payment Instructions:
Royal Bank of Canada

ABA: 021000021
JP Morgan Chase NY (CHASUS33)
A/C Royal Bank of Canada, NY Branch (ROYCUS3X)
A/C#: 920-1-033363
FFC A/C Name: RBC US Transit
Beneficiary A/C: 012692041499

Issuer Payment Instructions:
To be provided by Issuer

5. Offices: The Office of Dealer for the Transaction is: New York

Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281

The Office of Issuer for the Transaction is: Not Applicable

6. Notices: For purposes of this Confirmation:

Address for notices of communications to Issuer:

To: David Grawemeyer
151 Detroit Street
Denver, CO 80206
David.grawemeyer@janus.com
303-336-5053

with a copy to:

John Groneman
151 Detroit Street
Denver, CO 80206
John.groneman@janus.com
303-336-7466

Any notice or other communication required or permitted to be given to Dealer (for matters other than operational matters) with respect to this Confirmation shall be delivered in person or given by facsimile transmission to Dealer at the following address:

To: Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, NY 10281

Attn: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053
Email: SEDDOC@rbccm.com

Any notice or other communication concerning operational matters should be sent by facsimile to RBC Capital Markets, LLC at the above address; Attention: Back Office; Phone: (212) 858-7000; Facsimile: (212) 858-7033; Email: geda@rbccm.com

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Issuer represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date, and as of the date of any election by Issuer of the Share Termination Alternative under (and as defined in) Section 8(a) below, (A) none of Issuer and its officers and directors is aware of any material nonpublic information regarding Issuer or the Shares and (B) all reports and other documents filed by Issuer with the Securities and Exchange Commission pursuant to the

Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) Without limiting the generality of Section 13.1 of the Equity Definitions, Issuer acknowledges that Dealer is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, ASC Topic 480, Distinguishing Liabilities from Equity and ASC Topic 815-40, Derivatives and Hedging — Contracts in Entity’s Own Equity (or any successor issue statements), or under any other accounting guidance.

(iii) Prior to the Trade Date, Issuer shall deliver to Dealer a resolution of Issuer’s board of directors authorizing the Transaction and such other certificate or certificates as Dealer shall reasonably request.

(iv) Issuer is not entering into this Confirmation and will not make any election hereunder for the purpose of creating actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or raising or depressing or otherwise manipulating the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(v) Issuer is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(vi) On each of the Trade Date and the Premium Payment Date, Issuer is not, or will not be, “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”)) and Issuer would be able to purchase 10,734,357 Shares in compliance with the corporate laws of the jurisdiction of its incorporation.

(vii) Issuer shall not take any action to decrease the number of Available Shares below the Capped Number (each as defined below).

(viii) The representations and warranties of Issuer set forth in Article III of an Exchange Agreement dated as of June 14, 2013, between the Issuer and a holder of the Issuer’s 3.25% Convertible Senior Notes due 2014 (the “**Exchange Agreement**”) are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein.

(ix) Issuer understands no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency.

(x) During the period starting on the first Expiration Date and ending on the last Expiration Date (the “**Settlement Period**”), the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares will not be subject to a “restricted period,” as such term is defined in Regulation M under the Exchange Act (“**Regulation M**”).

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(xi) On each day during the Settlement Period, neither Issuer nor any “affiliate” or “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

(xii) (a) The Shares of Issuer issuable from time to time upon exercise of the Warrants (the “**Warrant Shares**”) have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights and (b) a number of Warrant Shares equal to the Capped Number has been accepted for listing or quotation on the Exchange, subject to notice of issuance. In addition, Issuer shall ensure that at all times until its delivery obligations hereunder have been met in full that the total number of Shares reserved for issuance hereunder is at least equal to the Capped Number.

(xiii) Issuer (i) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (iii) has total assets of at least \$50 million as of the date hereof.

(b) Each of Dealer and Issuer agrees and represents that it is an “eligible contract participant” as defined in the U.S. Commodity Exchange Act, as amended.

(c) Dealer acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Issuer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the

Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Issuer agrees and acknowledges that Dealer is a “financial institution,” “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment,” within the meaning of Section 546 of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code and a “payment or other transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) It is the intent of the parties that, in respect of Issuer, (a) the Transaction shall constitute a “qualified financial contract” within the meaning of 12 U.S.C. Section 1821(e)(8)(D)(i) and (b) a Non-defaulting Party’s rights under Sections 5 and 6 of the Agreement constitute rights of the kind referred to in 12 U.S.C. Section 1821(e)(8)(A).

(f) Issuer shall deliver to Dealer an opinion of counsel reasonably acceptable to Dealer, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement and clause (a)(xi) above and such other matters as Dealer may reasonably request.

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(g) On each anniversary of the Trade Date, Issuer shall deliver to Dealer an officer’s certificate, signed by an authorized officer, stating the number of Available Shares (as defined in the provision titled “Limitation On Delivery of Shares” below).

8. Miscellaneous:

(a) *Alternative Calculations and Issuer Payment on Early Termination and on Certain Extraordinary Events.* If Issuer shall owe Dealer any amount pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Issuer shall have the right, in its sole discretion, to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Share Termination**”); *provided* that if Issuer does not elect to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to require Issuer to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Issuer’s failure to elect or election to the contrary; and *provided further* that Issuer shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event of (i) an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash or (ii) an Event of Default, a Termination Event or an Extraordinary Event, in each case, which resulted from an event or events within Issuer’s control. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the Merger Date, the Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative: Applicable and means that Issuer shall deliver to Dealer the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable (the “**Share Termination Payment Date**”), in satisfaction of the Payment Obligation.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Issuer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization, Merger Event or Tender Offer, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization, Merger Event or Tender

Offer, as applicable. If such Insolvency, Nationalization, Merger Event or Tender Offer involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Applicable

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Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10, 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Seller is the issuer of the Shares or any portion of the Share Termination Delivery Units) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units”.

(b) *Payment by Dealer.* In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default of the type described in Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Dealer owes to Issuer an amount pursuant to Section 6 of the Agreement, or (ii) Dealer owes to Issuer an amount pursuant to Article 12 of the Equity Definitions (including, for the avoidance of doubt, any amount payable in connection with an Extraordinary Event), such amount shall be deemed to be zero.

(c) *Additional Termination Events.* The occurrence of any of the following shall constitute an Additional Termination Event with respect to which the Transaction shall be the sole Affected Transaction and Issuer shall be the sole Affected Party and Dealer shall be the party entitled to designate an Early Termination Date; *provided* that with respect to any Additional Termination Event, Dealer may choose to treat part of the Transaction as the sole Affected Transaction, and, upon the termination of the Affected Transaction, a Transaction with terms identical to those set forth herein except with a Number of Warrants equal to the unaffected number of Warrants shall be treated for all purposes as the Transaction, which shall remain in full force and effect:

(i) Dealer reasonably determines, upon advice of counsel, that it is necessary to terminate a portion of the Transaction so that Dealer’s related hedging activities will comply with applicable securities laws, rules or regulations;

(ii) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than Issuer, its subsidiaries and its and their employee benefit plans, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Issuer’s common equity representing more than 50% of the voting power of Issuer’s common equity;

(iii) the consummation of (A) any recapitalization, reclassification or change of Shares (other than changes resulting from a subdivision or combination) as a result of which Shares would be converted into, or exchanged for, stock, other securities, other property or assets or (B) any share exchange, consolidation or merger of Issuer pursuant to which Shares will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of Issuer and its subsidiaries, taken as a whole, to any person other than one of Issuer’s subsidiaries, unless holders of all classes of Issuer’s common equity immediately prior to such transaction that is a share exchange, consolidation or merger own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such event;

(iv) Issuer’s common stockholders approve any plan or proposal for the liquidation or dissolution of Issuer; or

(v) the Shares cease to be listed on at least one of the following: The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market (or any of their respective successors).

Notwithstanding the foregoing, a transaction set forth in clause (ii) or (iii) above will not constitute an Additional Termination Event if (a) at least 90% of the consideration received or to be received by Issuer’s common stockholders, excluding cash payments for fractional shares, in connection with such transaction or transactions otherwise constituting an Additional Termination Event consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or

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The NASDAQ Capital Market (or any of their respective successors) and (b) as a result of the completion of such transaction or transactions, the “Shares” are composed of such consideration.

(d) *Registration/Private Placement Procedures.* (i) If, in the reasonable judgment of Dealer, for any reason, any Shares or any securities of Issuer or its affiliates comprising any Share Termination Delivery Units deliverable to Dealer hereunder (any such Shares or securities, “**Delivered Securities**”) would not be immediately freely transferable by Dealer under Rule 144 under the Securities Act, then the provisions set forth in this Section 8(d) shall apply. At the election of Issuer by notice to Dealer within one Exchange Business Day after the relevant delivery obligation arises, but in any event at least one Exchange Business Day prior to the date on which such delivery obligation is due, either (A) all Delivered Securities delivered by Issuer to Dealer shall be, at the time of such delivery, covered by an effective registration statement of Issuer for

immediate resale by Dealer (such registration statement and the corresponding prospectus (the “**Prospectus**”) (including, without limitation, any sections describing the plan of distribution) in form and content commercially reasonably satisfactory to Dealer) or (B) Issuer shall deliver additional Delivered Securities so that the value of such Delivered Securities, as determined by the Calculation Agent to reflect an appropriate liquidity discount, equals the value of the number of Delivered Securities that would otherwise be deliverable if such Delivered Securities were freely tradeable (without prospectus delivery) upon receipt by Dealer (such value, the “**Freely Tradeable Value**”); *provided* that Issuer may not make the election described in this clause (B) if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the delivery by Issuer to Dealer (or any Affiliate of Dealer designated by Dealer) of the Delivered Securities or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Delivered Securities by Dealer (or any such Affiliate of Dealer). (For the avoidance of doubt, as used in this Section 8(d) only, the term “Issuer” shall mean the issuer of the relevant securities, as the context shall require.)

(ii) If Issuer makes the election described in Section 8(d)(i)(A) above:

(A) Dealer (or an Affiliate of Dealer designated by Dealer) shall be afforded a reasonable opportunity to conduct a due diligence investigation with respect to Issuer that is customary in scope for underwritten offerings of equity securities and that yields results that are reasonably satisfactory to Dealer or such Affiliate, as the case may be, in its discretion; and

(B) Dealer (or an Affiliate of Dealer designated by Dealer) and Issuer shall enter into an agreement (a “**Registration Agreement**”) on commercially reasonable terms in connection with the public resale of such Delivered Securities by Dealer or such Affiliate substantially similar to underwriting agreements customary for underwritten offerings of equity securities, in form and substance reasonably satisfactory to Dealer or such Affiliate and Issuer, which Registration Agreement shall include, without limitation, provisions substantially similar to those contained in such underwriting agreements relating to the indemnification of, and contribution in connection with the liability of, Dealer and its Affiliates and Issuer, shall provide for the payment by Issuer of all expenses in connection with such resale, including all registration costs and all fees and expenses of counsel for Dealer, and shall provide for the delivery of accountants’ “comfort letters” to Dealer or such Affiliate with respect to the financial statements and certain financial information contained in or incorporated by reference into the Prospectus.

(iii) If Issuer makes the election described in Section 8(d)(i)(B) above:

(A) Dealer (or an Affiliate of Dealer designated by Dealer) and any potential institutional purchaser of any such Delivered Securities from Dealer or such Affiliate identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation in compliance with applicable law with respect to Issuer customary in scope for private placements of equity securities (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them);

(B) Dealer (or an Affiliate of Dealer designated by Dealer) and Issuer shall enter into an agreement (a “**Private Placement Agreement**”) on commercially reasonable terms in connection with the private placement of such Delivered Securities by Issuer to Dealer or such Affiliate and the private resale of such shares by Dealer or such Affiliate, substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance reasonably satisfactory to Dealer and Issuer, which Private Placement Agreement shall include, without limitation, provisions

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substantially similar to those contained in such private placement purchase agreements relating to the indemnification of, and contribution in connection with the liability of, Dealer and its Affiliates and Issuer, shall provide for the payment by Issuer of all expenses in connection with such resale, including all fees and expenses of counsel for Dealer, shall contain representations, warranties and agreements of Issuer reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales, and shall use best efforts to provide for the delivery of accountants’ “comfort letters” to Dealer or such Affiliate with respect to the financial statements and certain financial information contained in or incorporated by reference into the offering memorandum prepared for the resale of such Shares; and

(C) Issuer agrees that any Delivered Securities so delivered to Dealer, (i) may be transferred by and among Dealer and its Affiliates, and Issuer shall effect such transfer without any further action by Dealer and (ii) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed with respect to such Delivered Securities, Issuer shall promptly remove, or cause the transfer agent for such Shares or securities to remove, any legends referring to any such restrictions or requirements from such Delivered Securities upon delivery by Dealer (or such Affiliate of Dealer) to Issuer or such transfer agent of seller’s and broker’s representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such Affiliate of Dealer).

(D) Issuer shall not take, or cause to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Issuer to Dealer (or any Affiliate designated by Dealer) of the Shares or Share Termination Delivery Units, as the case may be, or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Shares or Share Termination Delivery Units, as the case may be, by Dealer (or any such Affiliate of Dealer).

(iv) If Issuer makes the election described in clause (i)(B) of this paragraph (d), then Dealer or its Affiliate may sell such

Shares or Share Termination Delivery Units, as the case may be, during a period (the “**Resale Period**”) commencing on the Exchange Business Day following delivery of such Shares or Share Termination Delivery Units, as the case may be, and ending on the Exchange Business Day on which Dealer completes the sale of all such Shares or Share Termination Delivery Units, as the case may be, or a sufficient number of Shares or Share Termination Delivery Units, as the case may be, so that the realized net proceeds of such sales exceed the Freely Tradeable Value (such amount of the Freely Tradeable Value, the “**Required Proceeds**”). If any of such delivered Shares or Share Termination Delivery Units remain after such realized net proceeds exceed the Required Proceeds, Dealer shall return such remaining Shares or Share Termination Delivery Units to Issuer. If the Required Proceeds exceed the realized net proceeds from such resale, Issuer shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period the amount of such excess (the “**Additional Amount**”) in cash or in a number of additional Shares or Share Termination Delivery Units, as the case may be, (“**Make-whole Shares**”) in an amount that, based on the Relevant Price on the last day of the Resale Period (as if such day was the “Valuation Date” for purposes of computing such Relevant Price), has a dollar value equal to the Additional Amount. The Resale Period shall continue to enable the sale of the Make-whole Shares in the manner contemplated by this Section 8(d)(iv). This provision shall be applied successively until the Additional Amount is equal to zero, subject to Section 8(j).

(e) *Amendments to Equity Definitions.* The following amendments shall be made to the Equity Definitions:

(i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “an economic effect on the relevant Transaction”.

(ii) The first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: ‘(c) If “Calculation Agent Adjustment” is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the declaration or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has an economic effect on the Transaction and, if so, will (i) make appropriate adjustment(s), if any, to any one or

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more of;’ and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by (x) replacing the words “a diluting or concentrative” with “an” in the fifth line thereof, (y) deleting the words “diluting or concentrative effect” in the sixth to last line thereof and (z) replacing the phrase “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” with the phrase “(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)”.

(iii) Section 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words “diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “an economic effect on the relevant Transaction”.

(iv) Section 12.1(f) of the Equity Definitions is hereby amended by the deletion of the parenthetical in clause (i) thereof.

(v) For greater certainty, the definition of “Modified Calculation Agent Adjustment” in Sections 12.2 and 12.3 of the Equity Definitions shall be amended by adding the following italicized language after the stipulated parenthetical provision: “(including adjustments to account for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to this Transaction) *from the Exchange Business Day immediately preceding the Announcement Date or the Determination Date, as applicable, to the first Exchange Business Day immediately following the Merger Date (Section 12.2) or Tender Offer Date (Section 12.3).*”

(vi) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by (A) deleting (1) subsection (A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection (B); (B) replacing “will lend” with “lends” in subsection (B); and (C) replacing the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares” with the phrase “such Lending Party does not lend Shares” in the penultimate sentence.

(vii) Section 12.9(b)(v) of the Equity Definitions is hereby amended by (A) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and (B)(1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C) and (3) replacing in the penultimate sentence the words “either party” with “the Hedging Party” and (4) deleting clause (X) in the final sentence.

(f) *Repurchase Notices.* Issuer shall, on any day on which Issuer effects any repurchase of Shares, provide Dealer with a written notice of such repurchase (a “**Repurchase Notice**”) on such day if, following such repurchase, the Warrant Equity Percentage (as defined below) is greater by 0.5% or more than the Warrant Equity Percentage set forth in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% or more than the Warrant Equity Percentage as of the date hereof). The “**Warrant Equity Percentage**” as of any day is the fraction, expressed as a percentage, of the numerator of which is the Number of Warrants and the denominator of which is the number of Shares outstanding on such day. Issuer agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an “**Indemnified Party**”) from and against any and all losses, claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Issuer shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Issuer will reimburse any Indemnified Party for all expenses (including reasonable counsel fees and expenses) as they are

incurred (after notice to Issuer) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Issuer. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(g) *Transfer or Assignment.* Dealer may transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, at any time to any person or entity whatsoever without the consent of Issuer. At any time at

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which any Ownership Limitation or a Hedging Disruption exists, if Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to Dealer such that an Ownership Limitation or a Hedging Disruption, as the case may be, no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of the Transaction, such that such Ownership Limitation or a Hedging Disruption, as the case may be, no longer exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement or Section 8(a) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Issuer shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction.

(h) *Limit on Beneficial Ownership.* Notwithstanding anything to the contrary in the Agreement or this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, any Shares in connection with this Transaction if, immediately upon giving effect to such receipt of such Shares, (i) Dealer’s Beneficial Ownership would be equal to or greater than 9.0% of the outstanding Shares, (ii) Dealer, or any “affiliate” or “associate” of Dealer, would be an “interested stockholder” of Issuer, as all such terms are defined in Section 203 of the Delaware General Corporation Law or (iii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a “**Dealer Person**”) under any federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares (“**Applicable Laws**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Issuer or any contract or agreement to which Issuer is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (each of clause (i), (ii) and (iii) above, an “**Ownership Limitation**”). If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, Dealer’s right to receive such delivery shall not be extinguished and Issuer shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Dealer gives notice to Issuer that such delivery would not result in any of such Ownership Limitations being breached. “**Dealer’s Beneficial Ownership**” means the “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder (collectively, “**Section 13**”) of Shares, without duplication, by Dealer, together with any of its affiliates or other person subject to aggregation with Dealer under Section 13 for purposes of “beneficial ownership”, or by any “group” (within the meaning of Section 13) of which Dealer is or may be deemed to be a part (Dealer and any such affiliates, persons and groups, collectively, “**Dealer Group**”) (or, to the extent that, as a result of a change in law, regulation or interpretation after the date hereof, the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number). Notwithstanding anything in the Agreement or this Confirmation to the contrary, Dealer shall not become the record or beneficial owner, or otherwise have any rights as a holder, of any Shares that Dealer is not entitled to receive at any time pursuant to this Section 8(h), until such time as such Shares are delivered pursuant to this Section 8(h).

(i) *Limitation On Delivery of Shares.* Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Issuer be required to deliver Shares in connection with the Transaction in excess of two times the Number of Warrants (the “**Capped Number**”). Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Capped Number be subject to adjustment, to the extent that such adjustment would cause the Capped Number to exceed the number of Available Shares, unless such adjustment results from actions of Issuer or events within Issuer’s control. Issuer represents and warrants to Dealer (which representation and warranty shall be deemed to be repeated on each day that the Transaction is outstanding) that the Capped Number is equal to or less than the number of authorized but unissued Shares of the Issuer that are not reserved for future issuance in connection with transactions in the Shares (other than the Transaction) on the date of the determination of the Capped Number (such Shares, the “**Available Shares**”). In the event Issuer shall not have delivered the full number of Shares otherwise deliverable as a result of this Section 8(i) (the resulting deficit, the “**Deficit Shares**”), Issuer shall be continually obligated to deliver, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Issuer or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares reserved for issuance in respect of other transactions prior to the Trade Date become no longer so reserved or (iii) Issuer additionally authorizes any unissued Shares that are not reserved for other transactions. Issuer shall immediately notify Dealer of the occurrence of any

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of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Shares to be delivered) and promptly deliver such Shares thereafter. Issuer shall not, until Issuer’s obligations under the Transaction have been satisfied in full, use any Shares that become available for potential delivery to Dealer as a result of any of the foregoing events for the settlement or satisfaction of any transaction or obligation other than the Transaction or reserve any such Shares for future issuance for any purpose other than to satisfy Issuer’s

obligations to Dealer under the Transaction.

Notwithstanding anything to the contrary herein or in the Definitions or the Agreement, any Payment Obligation shall, for all purposes, be calculated without regard to the provisions set forth under this Section 8(i); *provided* that the number of Shares deliverable pursuant to Section 8(a) above (if applicable) shall not exceed the applicable Capped Number.

(j) *Right to Extend.* Dealer may postpone any Exercise Date or Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which event the Calculation Agent shall make appropriate adjustments to the Number of Shares to be Delivered with respect to one or more Components), if Dealer determines, in its good faith and reasonable discretion, upon advice of counsel in the case of the immediately following clause (ii), that such extension is reasonably necessary or appropriate to (i) preserve Dealer's hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the cash market, the stock loan market or any other relevant market or (ii) to enable Dealer to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Issuer or an affiliated purchaser of Issuer, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

(k) *No Netting and Set-Off.* Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(l) *Status of Claims in Bankruptcy.* Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders or Issuer in the event of Issuer's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Issuer's bankruptcy.

(m) *No Collateral.* Notwithstanding any provision of this Confirmation, the Agreement, the Equity Definitions or any other agreement between the parties to the contrary, the obligations of Issuer under the Transaction are not secured by any collateral.

(n) *Disclosure.* Effective from the date of commencement of discussions concerning the Transaction, Issuer and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Issuer relating to such tax treatment and tax structure.

(o) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Issuer, such delivery shall be effected through RBCCM. In addition, all notices, demands and communications of any kind relating to the Transaction between Dealer and Issuer shall be transmitted exclusively through RBCCM.

(p) *Effectiveness.* If, prior to the Effective Date, Dealer reasonably determines that it is advisable to cancel the Transaction because of concerns that Dealer's related hedging activities could be viewed as not complying with applicable securities laws, rules or regulations, the Transaction shall be cancelled and shall not become effective, and neither party shall have any obligation to the other party in respect of the Transaction.

(q) *Severability; Illegality.* Notwithstanding anything to the contrary in the Agreement, if compliance by either party with any provision of the Transaction would be unenforceable or illegal, (a) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (b) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(r) *Agreements and Acknowledgments Regarding Hedging.* Issuer understands, acknowledges and agrees that: (A) at any time on and prior to the final Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether,

when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the VWAP Price; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the VWAP Price, each in a manner that may be adverse to Issuer.

(s) *Early Unwind.* In the event the exchange by Issuer of the Existing Notes for the New Notes (each as defined in the Exchange Agreement) is not consummated with each Holder (as defined in each Exchange Agreement) pursuant to the Exchange Agreement for any reason by the close of business in New York on June 19, 2013 (or such later date as agreed upon by the parties) (June 19, 2013 or such later date being the "Early Unwind Date"), the Transaction shall automatically terminate (the "Early Unwind") on the Early Unwind Date and (x) the Transaction and all of the respective rights and obligations of Dealer and Issuer thereunder shall be cancelled and terminated and (y) Issuer shall assume, or reimburse the cost of, derivatives and other hedging activities entered into by Dealer or one or more of its affiliates in connection with hedging the Transaction and the unwind of such hedging activities. Following such termination, cancellation and payment, subject to the preceding sentence, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date.

(t) *Waiver of Jury Trial.* **EACH OF ISSUER AND BUYER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO**

THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF BUYER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) *Governing Law; Jurisdiction.* THIS CONFIRMATION AND THE TRADE NOTIFICATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION AND THE TRADE NOTIFICATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

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This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Issuer hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at (212) 428-3053. Originals shall be provided for your execution upon your request.

We are very pleased to have executed the Transaction with you and we look forward to completing other transactions with you in the near future.

Very truly yours,

ROYAL BANK OF CANADA
by its agent

RBC Capital Markets, LLC

By: /s/ Alex Rabaev
Name: Alex Rabaev
Title: Associate Director

Issuer hereby agrees to, accepts and confirms the terms of the foregoing as of the Trade Date.

JANUS CAPITAL GROUP INC.

By: /s/ Bruce Koepfgen
Name: Bruce Koepfgen
Title: Executive Vice President and Chief Financial Officer

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ANNEX A

For each Component of the Transaction, the Number of Warrants and Expiration Date is set forth below.

Component Number	Number of Warrants	Expiration Date
1	268,359	October 15, 2018
2	268,359	October 16, 2018
3	268,359	October 17, 2018
4	268,359	October 18, 2018
5	268,359	October 19, 2018
6	268,359	October 22, 2018
7	268,359	October 23, 2018
8	268,359	October 24, 2018
9	268,359	October 25, 2018
10	268,359	October 26, 2018
11	268,359	October 29, 2018
12	268,359	October 30, 2018
13	268,359	October 31, 2018
14	268,359	November 1, 2018
15	268,359	November 2, 2018
16	268,359	November 5, 2018

17	268,359	November 6, 2018
18	268,359	November 7, 2018
19	268,359	November 8, 2018
20	268,359	November 9, 2018
21	268,359	November 12, 2018
22	268,359	November 13, 2018
23	268,359	November 14, 2018
24	268,359	November 15, 2018
25	268,359	November 16, 2018
26	268,359	November 19, 2018
27	268,359	November 20, 2018
28	268,359	November 21, 2018
29	268,359	November 23, 2018
30	268,359	November 26, 2018
31	268,359	November 27, 2018
32	268,359	November 28, 2018
33	268,359	November 29, 2018
34	268,359	November 30, 2018
35	268,359	December 3, 2018
36	268,359	December 4, 2018
37	268,359	December 5, 2018
38	268,359	December 6, 2018
39	268,359	December 7, 2018
40	268,356	December 10, 2018
Total	10,734,357	

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SCHEDULE A

SCHEDULE B

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Section 6: EX-99.1 (EX-99.1)

Exhibit 99.1



JANUS CAPITAL
Group

June 14, 2013

**JANUS CAPITAL GROUP INC. ANNOUNCES PRIVATE NOTE
EXCHANGE TRANSACTION**

DENVER — Janus Capital Group Inc. (“JCG” or the “Company”) (NYSE: JNS) today announced that it has entered into separate privately negotiated exchange agreements pursuant to which \$117 million aggregate principal amount of newly issued, 0.75% Convertible Senior Notes due 2018 (“New Notes”) will be exchanged for \$110 million aggregate principal amount of the Company’s existing, 3.25% Convertible Senior Notes due 2014 (“Convertible Notes”). Following these transactions, \$60 million of existing Convertible Notes will remain outstanding.

The transaction takes advantage of favorable conditions in the marketplace and allows the Company to reduce its annual interest expense, extend the existing debt maturities and increase its financial flexibility. The additional financial flexibility provided by the transaction will allow the Company to retire existing, long-term debt obligations should the opportunity arise in the future.

The New Notes will pay interest semiannually at a rate of 0.75% and will be convertible, under certain circumstances, into cash, shares of JCG common stock, or a combination of cash and shares of JCG common stock, at the Company’s election. The initial conversion rate of the New Notes is 92.0598 shares of JCG common stock per \$1,000 principal amount of New Notes, which is equivalent to an initial conversion price of approximately \$10.86 per share of common stock, subject to adjustment in certain circumstances. This initial conversion price represents a premium of 25% relative to the closing price of \$8.69 per share on June 13, 2013.

In connection with the offering of the New Notes, the Company has entered into privately negotiated convertible note hedge and warrant transactions, which in combination are intended to increase the effective conversion price under the New Notes to approximately \$12.60, or a 45% premium relative to the closing price of \$8.69 per share on June 13, 2013. In the event that the warrant transaction is exercised, the Company intends to repurchase JCG common shares to offset resulting dilution. The repurchase of common shares will be at JCG's discretion, subject to market and business conditions.

In connection with establishing its initial hedge of the convertible note hedge transaction and warrant transaction, the hedge counterparty and/or its affiliates expect to purchase JCG common stock in open market transactions and/or privately negotiated transactions and/or enter into various cash-settled derivative transactions with respect to JCG common stock concurrently with, or shortly after, the pricing of the New Notes. In addition, the hedge counterparty and/or its affiliates may modify their hedge positions by entering into or unwinding various derivative transactions with respect to JCG common stock and/or by purchasing or selling JCG common stock in open market transactions and/or privately negotiated transactions following the pricing of the New Notes from time to time (and are likely to do so during any averaging period related to a conversion of New Notes). Any of these hedging activities could also increase, decrease or prevent an increase or decline in, the market price of JCG common stock.

The New Notes were offered and sold in reliance on exemptions from registration requirements under the Securities Act of 1933, as amended, have not been registered under the securities laws of any state or other jurisdiction, and may not be offered or sold in the United States without registration or an applicable exemption under the Securities Act of 1933 and applicable state securities or blue sky laws and foreign securities laws.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or jurisdiction.

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Contacts:

John Groneman, 303-336-7466

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About Janus Capital Group Inc.

Janus Capital Group Inc. is a global investment firm offering strategies from three individual investment boutiques: Janus Capital Management LLC ("Janus"), INTECH Investment Management LLC ("INTECH") and Perkins Investment Management LLC ("Perkins"). Each manager employs a research-intensive approach that is distinct within its respective asset class. This multi-boutique approach enables the firm to provide style-specific expertise across an array of strategies, including growth, value and risk-managed equities, fixed income and alternatives through one common distribution platform.

At the end of March 2013, JCG managed \$163.8 billion in assets for shareholders, clients and institutions around the globe. Based in Denver, JCG also has offices in Frankfurt, The Hague, Paris, London, Milan, Munich, Zurich, Singapore, Hong Kong, Tokyo, Melbourne, Dubai and Taipei.

* * *

Certain statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties, assumptions and other factors which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Statements preceded by, followed by or that otherwise include the words "believes," "expects," "anticipates," "intends," "projects," "estimates," "plans," "may increase," "may fluctuate," "forecast" and similar expressions or future or conditional verbs such as "will," "should," "would," "may" and "could" are generally forward-looking in nature and not historical facts. Any statements that refer to expectations or other characterizations of future events, circumstances or results are forward-looking statements. These statements are based on the beliefs and assumptions of Company management based on information currently available to management.

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Various risks, uncertainties, assumptions and factors that could cause future results to differ materially from those expressed by the forward-looking statements included in this press release include, but are not limited to, risks specified in the Company's Annual Report on Form 10-K for the year ended December 31, 2012, included under headings such as "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in other filings and furnishings made by the Company with the SEC from time to time. In light of these risks, uncertainties, assumptions and factors, the forward-looking events discussed in this press release may not occur. Many of these factors are beyond the control of the Company and its management. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date stated, or if no date is stated, as of the date of this press release. Except for the Company's ongoing obligations to

disclose material information under the applicable securities law and stock exchange rules, the Company undertakes no obligation to release any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events.

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