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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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**SKECHERS U.S.A., INC.**

*(Exact Name of Registrant as Specified in its Charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**5139**  
*(Primary Standard Industrial  
Classification Code Number)*

**95-4376145**  
*(I.R.S. Employer  
Identification Number)*

**228 Manhattan Beach Boulevard**

**Manhattan Beach, California 90266**

**(310) 318-3100**

**(310) 318-5019 (fax)**

*(Address including zip code and telephone number, including area code, of registrant's principal executive offices)*

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**Robert Greenberg**

**Chairman of the Board and Chief Executive Officer**

**228 Manhattan Beach Boulevard**

**Manhattan Beach, California 90266**

**(310) 318-3100**

**(310) 318-5019 (fax)**

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

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*Copies to*

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

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

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and

list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

**CALCULATION OF REGISTRATION FEE**

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<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
\$90,000,000 4.50% Convertible Subordinated Notes due April 15, 2007	\$90,000,000 <sup>(1)</sup>	100% <sup>(2)</sup>	\$90,000,000	\$8,280
Class A Common Stock, \$.001 par value <sup>(3)</sup>	3,465,804			— <sup>(4)</sup>

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(Footnotes to table on next page)

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

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- (1) Represents the aggregate principal amount of the notes issued by the registrant.
  - (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act and exclusive of accrued interest and distributions, if any.
  - (3) Represents 3,465,804 shares of Class A common stock issuable upon conversion of the notes at the conversion price of \$25.9680 per share of Class A common stock. Pursuant to Rule 416 under the Securities Act, such number of shares of Class A common stock registered hereby shall include an indeterminate number of shares of Class A common stock that may be issued in connection with a stock split, stock dividend, recapitalization or similar event.
  - (4) Pursuant to Rule 457(i) under the Securities Act, no additional filing fee is payable with respect to the shares of Class A common stock issuable upon conversion of the notes because no additional consideration will be received in connection with the exercise of the conversion privilege.
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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement relating to these securities that has been filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED MAY 9, 2002**

**PROSPECTUS**

**\$90,000,000**



**4.50% Convertible Subordinated Notes due April 15, 2007**

**and the Class A common stock issuable upon conversion of the notes**

We issued the notes offered by this prospectus in a private placement in April 2002. This prospectus will be used by selling securityholders to resell their notes and the Class A common stock issuable upon conversion of their notes. We will not receive any proceeds from this offering.

You may convert the notes into shares of our Class A common stock at any time before their maturity unless we have previously redeemed or repurchased them. The notes will be due on April 15, 2007. The conversion rate is 38.5089 shares per each \$1,000 principal amount of notes, subject to adjustment in certain circumstances. This is equivalent to an initial conversion price of approximately \$25.9680 per share.

We will pay interest on the notes on April 15 and October 15 of each year. The first interest payment will be made on October 15, 2002. The notes are subordinated in right of payment to all of our existing and future senior debt and will be effectively subordinated to all of the indebtedness and liabilities of our subsidiaries.

We may redeem some or all of the notes at any time before April 15, 2005 at a redemption price of \$1,000 per \$1,000 principal amount of notes, plus accrued and unpaid interest, if any, to, but excluding, the redemption date if the closing price of our Class A common stock has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day immediately before the date of mailing of the provisional redemption notice. Upon any such provisional redemption, we will make an additional payment in cash or, at our option, Class A common stock, or a combination of cash and Class A common stock, in an amount equal to \$135.00 per \$1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the date of redemption. We may also redeem some or all of the notes at any time on or after April 15, 2005, at the redemption prices set forth in this prospectus plus accrued and unpaid interest, if any, to, but excluding, the redemption date. In the event of a Change in Control, as described in this prospectus, you may require us to repurchase any notes held by you.

The notes are not listed on any securities exchange or included in any automated quotation system. The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc. Our Class A common stock is listed on the New York Stock Exchange under the symbol "SKX." On May 7, 2002, the closing price of our Class A common stock on the New York Stock Exchange was \$21.49 per share.

**The securities offered by this prospectus involve a high degree of risk. See "Risk Factors" beginning on page 7.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This prospectus is dated May , 2002

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## WHERE YOU CAN FIND MORE INFORMATION

We file annual and special reports and other information with the SEC. Certain of our SEC filings are available over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities:

Public Reference Room Office  
450 Fifth Street, N.W.  
Room 1024  
Washington, D.C. 20549

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. Callers in the United States can also call 1-800-732-0330 for further information on the operations of the public reference facilities.

## DOCUMENTS INCORPORATED BY REFERENCE

We incorporate information into this prospectus by reference, which means that we disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede the information contained in this prospectus. We incorporate by reference the documents listed below:

- our Annual Report on Form 10-K for the year ended December 31, 2001;
  - our Current Reports on Form 8-K filed on April 9, 2002 and April 29, 2002; and
  - the description of our capital stock contained in our registration statement on Form 8-A filed with the SEC on August 20, 1998, including any amendment or report filed for the purpose of updating such description.
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We also incorporate by reference all documents filed by us pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of the notes.

Any statement contained in a document that is incorporated by reference will be modified or superseded for all purposes to the extent that a statement contained in this prospectus, or in any other document that is subsequently filed with the SEC and incorporated by reference, modifies or is contrary to that previous statement. Any statement so modified or superseded will not be deemed a part of this prospectus except as so modified and superseded.

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

Skechers U.S.A.  
228 Manhattan Beach Boulevard  
Manhattan Beach, CA 90266  
Attention: David Weinberg  
Chief Financial Officer  
Telephone: (310) 318-3100

You should rely only on the information incorporated by reference or provided in this prospectus or a prospectus supplement or amendment. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume the information in this prospectus or a prospectus supplement or amendment is accurate as of any date other than the date on the front of the documents.

### **FORWARD-LOOKING STATEMENTS**

In addition to historical information, this prospectus contains statements relating to our future business and/or results, including, without limitation, the statements under the captions “Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business.” These statements include certain projections and business trends which are “forward-looking” within the meaning of the United States Private Securities Litigation Reform Act of 1995. You can identify these statements by the use of words like “may,” “will,” “could,” “should,” “project,” “believe,” “anticipate,” “expect,” “plan,” “estimate,” “forecast,” “potential,” “intend,” “continue” and variations of these words or comparable words. Forward-looking statements do not guarantee future performance and involve risks and uncertainties. Actual results will differ, and may differ materially, from projected results as a result of certain risks and uncertainties. These risks and uncertainties include, without limitation, those described under “Risk Factors” and those detailed from time to time in our filings with the SEC, and include, among others, the following:

- international, national and local general economic and market conditions;
- the size and growth of the casual, functional and active footwear markets;
- our ability to respond to changing consumer demands, identify and interpret fashion trends, successfully market new products and maintain our brand image;
- intense competition from other established companies in the footwear industry for consumers;
- our ability to successfully execute our growth strategy, and forecast, manage and sustain our growth and inventories;
- our dependence on independent contract manufacturers and risks associated with reduction in the availability of production capacity and work stoppages;
- general risks associated with doing business outside the United States, including, without limitation, changing economic conditions, political and social unrest, import tariffs and trade duties, import and export controls and compliance with foreign laws;

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- changes in trade or political relations with China and political instability in China;
- compliance by our contract manufacturers, suppliers and licensees with applicable United States and foreign laws and regulations;
- our ability to successfully open retail stores in existing and new markets, and meet sales forecasts for existing retail stores in those markets;
- fluctuations and difficulty in forecasting operating results, including, without limitation, the fact that advance “futures” orders may not be indicative of future revenues due to the changing mix of futures and at-once orders or due to changing cancellation rates;
- the loss of a major customer or a significant decrease in sales to a major customer;
- our ability to attract and retain qualified personnel;
- our ability to secure and protect trademarks, patents and other intellectual property;
- business disruptions due to energy shortages or natural disasters in California;
- any liability and other claims asserted against us; and
- other factors referenced or incorporated by reference in this prospectus and other filings with the Securities and Exchange Commission.

These risks are not exhaustive. Other sections of this prospectus may include additional factors which could adversely impact our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or to the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. These forward-looking statements are made only as of the date of this prospectus. Except for our ongoing obligation to disclose material information as required by federal securities laws, we do not intend to update you concerning any future revisions to any forward-looking statements to reflect events or circumstances occurring after the date of this prospectus.



## PROSPECTUS SUMMARY

*This summary highlights some information from this prospectus, and it may not contain all of the information that is important to you. You should read the following summary together with the more detailed information regarding our company and the notes being sold in this offering, including "Risk Factors" and our consolidated financial statements and related notes, included elsewhere in, or incorporated by reference into, this prospectus.*

### Our Company

We design and market a collection of contemporary footwear for men, women and children under the Skechers brand, one of the most recognized names in the footwear industry. Our footwear reflects a combination of style, quality and value that appeals to a broad range of customers. Our shoes are sold through a wide range of department stores and leading specialty stores, a growing network of our own retail stores and our e-commerce website. Our objective is to continue to profitably grow our domestic operations, while leveraging our brand name to expand internationally.

We seek to offer consumers a collection of fashionable footwear that satisfies their casual, active and dress footwear needs. Our product line currently consists of over 1,500 active styles that are organized in seven distinct collections. Our core customer is a style-conscious consumer between the ages of 12 and 25 who is attracted to our youthful brand image and fashion forward designs. Over the last several years, we have introduced and expanded several footwear lines that have broadened our customer base. Our *Skechers Kids* line combines styling themes found elsewhere in our product lines with colors and materials that reflect a playful image appropriate for children. We have also recently introduced or expanded several other lines such as *Skechers Collection* and *Skechers By Michelle K* that appeal to young adults interested in sophisticated fashions for the workplace and social occasions.

We believe that a well-recognized brand is an important element for success in the footwear business. We have aggressively promoted the Skechers brand through a comprehensive marketing campaign. This ongoing program has included endorsements from celebrities such as Britney Spears, Rick Fox, Robert Downey, Jr., Matt Dillon and Rob Lowe, print advertisements in publications such as *GQ*, *Vogue* and *Seventeen* and commercials aired on major networks and leading cable channels such as MTV, ESPN and Nickelodeon. We believe that this campaign, which is image oriented rather than product specific, has resulted in a high level of recognition of the Skechers brand across a variety of footwear categories.

We were founded in 1992 as a distributor of third party footwear. Over time, we shifted our focus to the design and marketing of footwear lines for several brands that we owned. Our success with this effort encouraged us, starting in 1996, to focus almost exclusively on the Skechers brand. Our net sales grew to \$960.4 million in 2001 from \$115.1 million in 1996, representing a compound annual growth rate of 52.8%. In 2001, our net sales grew by 42.3%. This growth was achieved through several ongoing initiatives that have included an expanded product line, the acquisition of new wholesale accounts and a growing base of our own retail stores. We have attempted to balance our growth with a focus on profitability. In 2001, our gross profit as a percent of net sales increased to 42.3% from 42.1% in 2000. During the fourth quarter ended December 31, 2001, our gross margin was 39.7% compared to 43.3% in the same period during 2000.

### Domestic Sales

#### Wholesale Accounts

As of December 31, 2001, we distributed our footwear to over 3,500 wholesale accounts in the United States. These accounts include such leading department stores as Nordstrom, Kohl's and JC Penney and specialty footwear retailers such as Famous Footwear, Shoe Carnival and FootAction. Our shoes are also sold through a large number of locally focused footwear chains. We believe that our broad product line enables us to appeal to a variety of wholesale accounts, many of whom may operate stores within the same mall or other retail locations, because retailers can select those Skechers styles that best satisfy the fashion, function and price criteria of their customers.

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### **Retail Stores**

As of December 31, 2001, we owned and operated an integrated network of 78 Skechers stores in the United States, consisting of 29 concept stores, 29 factory outlet stores and 20 warehouse outlet stores. These stores work in unison to promote our full product line, appeal to consumers at a variety of price points and remove excess inventory from our system. Our concept stores, which are located in marquee street locations or high performing regional malls, promote awareness of the Skechers brand and showcase a broad assortment of our footwear. Our factory outlet stores generally sell in-season footwear at lower price points while our warehouse outlet stores appeal to our most value conscious customers and help us clear merchandise from past seasons.

### **International Sales**

Our footwear is currently sold in over 100 countries and territories throughout the world. We believe that consumers outside the United States are attracted to our footwear because of our distinctive brand image and the same attributes of contemporary design, quality and value that appeal to our domestic customers. We generate revenues from outside the United States from three principal sources: (1) sales of our footwear directly to foreign distributors who distribute such footwear to department stores and specialty retail stores in Europe, Asia, Latin America, South America and numerous other countries and territories, (2) in France, Germany and the United Kingdom, we sell footwear directly to department stores and specialty retail stores and through retail stores that we own and operate and (3) to a lesser extent, royalties from licensees who manufacture and distribute our products outside the United States. We intend to further increase our share of the international footwear market by heightening our marketing presence through our international advertising campaigns, which are designed to establish Skechers as a global brand synonymous with casual shoes.

### **Our Strategy**

We attempt to distinguish ourselves from other participants in the footwear industry and to provide for controlled, well-managed growth. The following are the key elements of this strategy:

- *Leverage the Skechers Brand*

The appeal of the Skechers brand is an integral part of our business and a source of sustainable competitive advantage. We believe that consumers generally associate the Skechers brand name with footwear for an active, youthful lifestyle. This appeal, which extends beyond any single shoe category or style, allows us to respond to evolving fashion trends. We utilize an integrated campaign of celebrity endorsements, high impact print and television advertising, point-of-purchase marketing and high-profile trade show presentations to establish and maintain our image. We endeavor to spend approximately 8% to 10% of annual net sales in the marketing of our footwear and the promotion of the Skechers brand.

- *Offer an Innovative, Compelling Footwear Collection*

Our footwear line covers a broad range of functional categories that include fashion sneakers and joggers, casual dress shoes, hiking and street boots and shoe based skates. We believe that this collection is one of the most comprehensive in the footwear industry and an important source of differentiation from our competitors. We introduce new footwear lines in accordance with our industry's spring and fall selling seasons, and we seek to stay current with evolving fashion trends by offering complementary styles every 30 to 60 days. Our footwear is generally priced to be highly competitive with other branded footwear collections.

- *Maximize our Wholesale Network's Productivity*

Our footwear is currently carried by almost 3,500 leading department stores and specialty retailers in the United States. We continuously work with these accounts to increase the amount and net profitability of our products that they sell. Our team of sales and merchandising professionals help retailers determine the styles they should carry and how our product should be displayed. They also work with wholesale accounts to monitor inventory levels and, in turn, provide information that allows us to more efficiently coordinate our production schedules. We expect to increase the number of stores that sell our footwear as our existing network of retailers open new locations and we identify other high productivity retailers that can support our collections within a given market.

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- *Open Additional Skechers Retail Stores*

We intend to selectively open new Skechers retail stores throughout the world, including approximately 10 to 15 domestic retail stores in 2002. We operate our retail store strategy through our three integrated retail formats: the concept store, the factory outlet and the warehouse outlet store. Our concept stores complement our wholesale distribution accounts by building awareness of the Skechers brand and consumer interest in our footwear collection. Our store base also helps us to manage our inventory by providing early feedback on new styles and, through our outlet and warehouse stores, a brand sensitive venue to sell excess product.

- *Expand our International Operations*

We are working to significantly increase our sales outside of the United States. We believe that Skechers' lifestyle image and contemporary footwear collections both have universal appeal. We have begun to increase our international advertising campaign to support this growth initiative and expect to expand the number of stores where our product is sold. In 2001, we established wholly owned subsidiaries in France, Germany and the United Kingdom to support our wholesale accounts and our base of owned Skechers stores. Our approach in most other markets has been to work with third party distributors such as in Japan, where our partner recently opened our first Skechers flagship store in Asia.

- *Seek Opportunistic Licensing Deals*

We are currently evaluating opportunities to license the Skechers brand name for non-footwear related apparel and accessories. We believe that licensing activities could, in time, be an important source of sustainable revenue for us. Our foremost objective in any licensing partnership will be to ensure the integrity of the Skechers brand. We intend to retain a high degree of control over the design and distribution of licensed products and to only work with those partners who have a proven track record of brand sensitivity. We also own several brand names other than Skechers that we believe could provide attractive licensing opportunities.

### **2002 Operating Results**

Our net sales for the quarter ended March 31, 2002 rose 7.7% to \$244.9 million compared to \$227.5 million in the first quarter of the prior year, and our net earnings for the quarter increased 18.6% to \$20.3 million compared to net income of \$17.1 million in the first quarter of 2001. Our gross profit for the quarter ended March 31, 2002 was \$102.5 million compared to \$99.3 million in the first quarter of the prior year, and our gross margin was 41.9% for the quarter compared to 43.7% in the first quarter of 2001. As a result of increased earnings, diluted earnings per share for the quarter ended March 31, 2002 rose to \$0.53 on 38,172,000 diluted weighted average shares outstanding compared to \$0.45 per diluted share on 38,127,000 diluted weighted average shares outstanding for the quarter ended March 31, 2001.

We strengthened our balance sheet at March 31, 2002. Specifically, cash rose to \$62.9 million from \$15.6 million at December 31, 2001. Inventory was \$111.1 million at March 31, 2001, representing a reduction of \$46.5 million from December 31, 2001 and a 6.7% increase over inventory of \$104.1 million at March 31, 2001. Working capital rose to \$163.3 million, which represents a \$23.3 million improvement over working capital of \$140.0 million at December 31, 2001.

### **Other Information**

We were incorporated in California in May 1992 and reincorporated in Delaware in May 1998. Our executive offices are located at 228 Manhattan Beach Boulevard, Manhattan Beach, California 90266. Our telephone number is (310) 318-3100. Our website can be found at [www.skechers.com](http://www.skechers.com). Our website does not constitute part of this prospectus. When used in this prospectus, the terms "Skechers," "we," "our," or "us" refer to Skechers U.S.A., Inc. and its consolidated subsidiaries, as appropriate in the context.

## Industry and Market Data

In this prospectus we rely on and refer to information and statistics regarding our markets and market share in the sectors in which we compete. We obtained this information and statistics from various third party sources, discussions with our customers and our own internal estimates. We believe that these sources and estimates are reliable, but have not independently verified them and cannot guarantee their accuracy or completeness.

## Trademarks

We have registered the *Skechers*, *Skechers USA*, *S Design*, *Skechers Comfort*, *Skechers Kids*, *Somethin' Else from Skechers*, *Skechers By Michelle K*, *4 Wheelers* and *4 Wheelers by Skechers* trademarks. We also use the *Skechers Sport*, *Skechers Collection* and *Skechers Active* trademarks. This prospectus contains certain additional trade names, trademarks and service marks of other companies and ours. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply a relationship with, or endorsement or sponsorship of, us by these other parties.

## The Offering

Securities Offered	\$90,000,000 aggregate principal amount of 4.50% Convertible Subordinated Notes due April 15, 2007 and shares of Class A common stock issuable upon conversion of the notes.
Interest	We will pay interest on the notes semi-annually on April 15 and October 15 of each year, commencing October 15, 2002.
Conversion	<p>The notes are convertible at the option of the holder into shares of Class A common stock at a conversion rate of 38.5089 shares of Class A common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$25.9680 per share. The conversion rate is subject to adjustment.</p> <p>You may convert the notes at any time on or before the close of business on the maturity date, unless we have previously redeemed or repurchased the notes; provided, however, that if a note is called for redemption or repurchase, you will be entitled to convert the note at any time before the close of business on the date immediately preceding the date fixed for redemption or repurchase, as the case may be.</p>
Subordination	The notes are unsecured and subordinated to our present and future Senior Debt, as that term is defined in this prospectus. The notes are also structurally subordinated in right of payment to all indebtedness and other liabilities of our subsidiaries. As of December 31, 2001, we had \$282.0 million of Senior Debt outstanding of which our subsidiaries had \$13.1 million of indebtedness outstanding. The indenture under which the notes have been issued, or the Indenture, does not restrict our incurrence of indebtedness, including Senior Debt, or our subsidiaries' incurrence of indebtedness.
Global Note; Book Entry System	The notes are issued only in fully registered form without interest coupons and in minimum denominations of \$1,000. The notes are evidenced by one or more global notes deposited with the trustee for the notes, as custodian for The Depository Trust Company (DTC). Beneficial interest in the global notes are shown on, and

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transfers of those beneficial interests can only be made through, records maintained by DTC and its participants.

Optional Redemption	We may redeem the notes, at our option, in whole or in part, on or after April 15, 2005, at the redemption prices set forth in this prospectus plus accrued and unpaid interest to, but excluding, the redemption date.
Provisional Redemption	We may redeem the notes, in whole or in part, at any time before April 15, 2005, at a redemption price equal to \$1,000 per \$1,000 principal amount of the notes to be redeemed plus accrued and unpaid interest, if any, to, but excluding, the date of redemption if (1) the closing price of our Class A common stock on the New York Stock Exchange has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day immediately before the date of mailing of the provisional redemption notice and (2) the registration statement of which this prospectus forms a part is effective and available for use and is expected to remain effective and available for use for 30 days following the provisional redemption date, unless registration is no longer required. Upon any provisional redemption, we will make an additional payment in cash or, at our option, shares of Class A common stock, or in a combination of cash and shares of Class A common stock, with respect to the notes called for redemption in an amount equal to \$135.00 per \$1,000 principal amount of the notes, less the amount of any interest actually paid on the note before the date of redemption. Any such payment in Class A common stock will be made valuing such Class A common stock at 95% of the average of the closing sales prices of the Class A common stock on the New York Stock Exchange for each of the five trading days ending with the third trading day immediately prior to the redemption date. We will be obligated to make this additional payment on all notes called for provisional redemption, including any notes converted after the notice date and before the redemption date.
Repurchase at Option of Holders Upon a Change in Control	Upon a Change in Control, as that term is defined in this prospectus, you will have the right, subject to certain conditions and restrictions, to require us to repurchase your notes, in whole or in part, at 100% of their principal amount, plus accrued and unpaid interest to the repurchase date. The repurchase price is payable in cash or, at our option, in shares of Class A common stock. However, we, or the successor entity in the Change in Control transaction, may pay the repurchase price in Class A common stock only if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. If the repurchase price is paid in Class A common stock, the Class A common stock will be valued at 95% of the average of the high and low sales prices of the Class A common stock on the New York Stock Exchange for each of the five trading days ending with the third trading day prior to the repurchase date. A Change in Control could be an event of default under the Senior Debt. In those circumstances, the subordination provision of the Indenture would

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likely prevent us from repurchasing the notes until the Senior Debt is paid in full.

### Use of Proceeds

We will not receive any proceeds from the sale by any selling security holder of the notes or the shares offered by this prospectus.

### Events of Default

The following will be events of default under the Indenture for the notes:

- we fail to pay the principal of or any premium, if any, on any note when due, whether or not the payment is prohibited by the Indenture's subordination provisions;
- we fail to pay any interest (including Liquidated Damages, if any, as that term is defined in this prospectus) on these notes when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture's subordination provisions;
- we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture's subordination provisions;
- we fail to perform or observe any other term, covenant or agreement contained in the notes or the Indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;
- we fail to pay by the end of any applicable grace period, if any, after the maturity of any indebtedness for money borrowed by us or any of our significant subsidiaries in excess of \$10 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated, such acceleration is not annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes;
- we fail to deliver shares of Class A common stock, together with cash instead of fractional shares, when those shares of Class A common stock or cash instead of fractional shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date; and
- certain events of bankruptcy, insolvency or reorganization with respect to us and our significant subsidiaries specified in the Indenture.

### Registration Rights

If we fail to comply with certain of our obligations under the Registration Rights Agreement, Liquidated Damages will be payable on the notes.

### PORTAL Trading of Notes

The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc.

### Risk Factors

You should read "Risk Factors" beginning on page 7 of this prospectus, so that you understand the risks associated with an investment in the notes.

## RISK FACTORS

*You should carefully consider and evaluate all of the information contained or incorporated by reference in this prospectus, including the following risk factors, before deciding to invest in our notes. Any of these risks could materially and adversely affect our business, financial condition and results of operations, which in turn could adversely affect the price of the notes and our Class A common stock.*

### Risks Related to Our Business

***Our future success depends on our ability to respond to changing consumer demands, identify and interpret fashion trends and successfully market new products.***

The footwear industry is subject to rapidly changing consumer demands and fashion trends. Accordingly, we must identify and interpret fashion trends and respond in a timely manner. Demand for and market acceptance of new products are uncertain and achieving market acceptance for new products generally requires substantial product development and marketing efforts and expenditures. If we do not continue to meet changing consumer demands and develop successful styles in the future, our growth and profitability will be negatively impacted. We frequently make decisions about product designs and marketing expenditures several months in advance of the time when consumer acceptance can be determined. If we fail to anticipate, identify or react appropriately to changes in styles and trends or are not successful in marketing new products, we could experience excess inventories, higher than normal markdowns or an inability to profitably sell our products. Because of these risks, a number of companies in the footwear industry specifically, and the fashion and apparel industry in general, have experienced periods of rapid growth in revenues and earnings and thereafter periods of declining sales and losses, which in some cases have resulted in companies in these industries ceasing to do business. Similarly, these risks could have a severe negative effect on our results of operations or financial condition.

***Our business and the success of our products could be harmed if we are unable to maintain our brand image.***

Our success to date has been due in large part to the strength of our brand. If we are unable to timely and appropriately respond to changing consumer demand, our brand name and brand image may be impaired. Even if we react appropriately to changes in consumer preferences, consumers may consider our brand image to be outmoded or associate our brand with styles of footwear that are no longer popular. In the past, several footwear companies have experienced periods of rapid growth in revenues and earnings followed by periods of declining sales and losses. Our business may be similarly affected in the future.

***Our business could be harmed if we fail to maintain proper inventory levels.***

We place orders with our manufacturers for some of our products prior to the time we receive all of our customers' orders. We do this to minimize purchasing costs, the time necessary to fill customer orders and the risk of non-delivery. We also maintain an inventory of certain products that we anticipate will be in greater demand. However, we may be unable to sell the products we have ordered in advance from manufacturers or that we have in our inventory. Inventory levels in excess of customer demand may result in inventory write-downs, and the sale of excess inventory at discounted prices could significantly impair our brand image and have a material adverse effect on our operating results and financial condition. Conversely, if we underestimate consumer demand for our products or if our manufacturers fail to supply the quality products that we require at the time we need them, we may experience inventory shortages. Inventory shortages might delay shipments to customers, negatively impact retailer and distributor relationships, and diminish brand loyalty.

***We may be unable to successfully execute our growth strategy or manage or sustain our growth.***

We have grown quickly since we started our business. Our ability to grow in the future depends upon, among other things, the continued success of our efforts to expand our footwear offerings and distribution channels. However, our rate of growth may decline or we may not be profitable in future quarters or fiscal years. Furthermore, as our business becomes larger, we may not be able to maintain our historical growth rate



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or effectively manage our growth. We anticipate that as our business grows, we will have to improve and enhance our overall financial and managerial controls, reporting systems and procedures. We may be unable to successfully implement our current growth strategy or other growth strategies or effectively manage our growth, any of which would negatively impair our net sales and earnings.

### ***Our business may be negatively impacted as a result of changes in the economy.***

Our business depends on the general economic environment and levels of consumer spending that affect not only the ultimate consumer, but also retailers, our primary direct customers. Purchases of footwear tend to decline in periods of recession or uncertainty regarding future economic prospects, when consumer spending, particularly on discretionary items, declines. During periods of recession or economic uncertainty, we may not be able to maintain or increase our sales to existing customers, make sales to new customers, open and operate new retail stores, maintain sales levels at our existing stores, maintain or increase our international operations on a profitable basis, or maintain or improve our earnings from operations as a percentage of net sales. As a result, our operating results may be adversely and materially affected by downward trends in the economy or the occurrence of events that adversely affect the economy in general. Furthermore, in anticipation of continued increases in net sales, we have significantly expanded our infrastructure and workforce to achieve economies of scale. Because these expenses are fixed in the short term, our operating results and margins will be adversely impacted if we do not continue to grow as anticipated. For example, due in large part to the slowdown in the global economy, our net sales for 2001 were lower than anticipated. This lower level of sales adversely affected our operating results for 2001 and could continue to do so in 2002 and beyond.

### ***Economic, political, military or other events in a country where we make significant sales or have significant operations could interfere with our success or operations there and harm our business.***

We market and sell our products and services throughout the world. The September 11, 2001 attacks disrupted commerce throughout the United States and other parts of the world. The continued threat of similar attacks throughout the world and the military action taken by the United States and other nations may cause significant disruption to commerce throughout the world. To the extent that such disruptions further slow the global economy or, more particularly, result in delays or cancellations of purchase orders for our products, our business and results of operations could be materially adversely affected. We are unable to predict whether the threat of new attacks or the responses thereto will result in any long-term commercial disruptions or if such activities or responses will have a long-term material adverse effect on our business, results of operations or financial condition.

### ***We depend upon a relatively small group of customers for a large portion of our sales.***

During 2001, our net sales to our five largest customers accounted for approximately 25.7% of total net sales. No one customer accounted for 10.0% or more of our net sales during 2001. As of December 31, 2001, one customer accounted for 10.2% of our net trade accounts receivable. Although we have long-term relationships with many of our customers, our customers do not have a contractual obligation to purchase our products and we cannot be certain that we will be able to retain our existing major customers. Furthermore, the retail industry regularly experiences consolidation, contractions and closings. If there are further consolidations, contractions or closings in the future, we may lose customers or be unable to collect accounts receivables of major customers in excess of amounts that we have insured. If we lose a major customer, experience a significant decrease in sales to a major customer, or are unable to collect the accounts receivable of a major customer in excess of amounts insured, our business could be harmed.

### ***Our operating results could be negatively impacted if our sales are concentrated in any one style or group of styles.***

If any one style or group of similar styles of our footwear were to represent a substantial portion of our net sales, we could be exposed to risk should consumer demand for such style or group of styles decrease in subsequent periods. We attempt to hedge this risk by offering a broad range of products, and no style comprised over 5.0% of our gross wholesale sales for the years ended either December 31, 2000 or 2001.



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However, this may change in the future and fluctuations in sales of any given style that represents a significant portion of our future net sales could have a negative impact on our operating results.

***We rely on independent contract manufacturers and, as a result, are exposed to potential disruptions in product supply.***

Our footwear products are currently manufactured by independent contract manufacturers. During 2001, the top four manufacturers of our manufactured products produced approximately 51.9% of our total purchases, but none individually accounted for more than 20.0%. We do not have long-term contracts with manufacturers and we compete with other footwear companies for production facilities. We could experience difficulties with these manufacturers, including reductions in the availability of production capacity, failure to meet our quality control standards, failure to meet production deadlines or increased manufacturing costs. This could result in our customers canceling orders, refusing to accept deliveries or demanding reductions in purchase prices, any of which could have a negative impact on our cash flow and harm our business.

If our current manufacturers cease doing business with us, we could experience an interruption in the manufacture of our products. Although we believe that we could find alternative manufacturers, we may be unable to establish relationships with alternative manufacturers that will be as favorable as the relationships we have now. For example, new manufacturers may have higher prices, less favorable payment terms, lower manufacturing capacity, lower quality standards or higher lead times for delivery. If we are unable to provide products consistent with our standards or the manufacture of our footwear is delayed or becomes more expensive, our business would be harmed.

***Our international sales and manufacturing operations are subject to the risks of doing business abroad, which could affect our ability to sell or manufacture our products in international markets, obtain products from foreign suppliers or control the costs of our products.***

Substantially all of our net sales during 2001 were derived from sales of footwear manufactured in foreign countries, with most manufactured in China and, to a lesser extent, in Italy, the Philippines and Brazil. We also sell our footwear in several foreign countries and plan to increase our international sales efforts as part of our growth strategy. Foreign manufacturing and sales are subject to a number of risks, including:

- political and social unrest;
- changing economic conditions;
- international political tension and terrorism;
- work stoppages;
- transportation delays;
- loss or damage to products in transit;
- expropriation;
- nationalization;
- the imposition of tariffs and trade duties both international and domestically;
- import and export controls and other nontariff barriers;
- exposure to different legal standards (particularly with respect to intellectual property);
- compliance with foreign laws; and
- changes in domestic and foreign governmental policies.

In particular, because substantially all of our products are manufactured in China, adverse change in trade or political relations with China or political instability in China would severely interfere with the manufacture of our products and would materially adversely affect our operations.

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In addition, if we, or our foreign manufacturers, violate United States or foreign laws or regulations, we may be subjected to extra duties, significant monetary penalties, the seizure and the forfeiture of the products we are attempting to import or the loss of our import privileges. Possible violations of United States or foreign laws or regulations could include inadequate record keeping of our imported product, misstatements or errors as to the origin, quota category, classification, marketing or valuation of our imported products, fraudulent visas, or labor violations. The effects of these factors could render our conduct of business in a particular country undesirable or impractical and have a negative impact on our operating results.

***Our business could be harmed if our contract manufacturers, suppliers or licensees violate labor or other laws.***

We require our independent contract manufacturers, suppliers and licensees to operate in compliance with applicable United States and foreign laws and regulations. Manufacturers are required to certify that neither convicted, forced or indentured labor (as defined under United States law) nor child labor (as defined by the manufacturer's country) is used in the production process, that compensation is paid in accordance with local law and that their factories are in compliance with local safety regulations. Although we promote ethical business practices and our sourcing personnel periodically visit and monitor the operations of our independent contract manufacturers, suppliers and licensees, we do not control them or their labor practices. If one of our independent contract manufacturers, suppliers or licensees violates labor or other laws or diverges from those labor practices generally accepted as ethical in the United States, it could result in adverse publicity for us, damage our reputation in the United States, or render our conduct of business in a particular foreign country undesirable or impractical, any of which could harm our business.

***Our planned expansion involves a number of risks that could prevent or delay the successful opening of new stores as well as impact the performance of our existing stores.***

Our ability to open and operate new stores successfully depends on many factors, including, among others, our ability to:

- identify suitable store locations, the availability of which is outside of our control;
- negotiate acceptable lease terms, including desired tenant improvement allowances;
- source sufficient levels of inventory to meet the needs of new stores;
- hire, train and retain store personnel;
- successfully integrate new stores into our existing operations; and
- satisfy the fashion preferences in new geographic areas.

In addition, many of our new stores will be opened in regions of the United States in which we currently have few or no stores. The expansion into new markets may present competitive, merchandising and distribution challenges that are different from those currently encountered in our existing markets. Any of these challenges could adversely affect our business and results of operations. In addition, to the extent our new store openings are in existing markets, we may experience reduced net sales volumes in existing stores in those markets.

***Many of our retail stores depend heavily on the customer traffic generated by shopping and factory outlet malls or by tourism.***

Many of our concept stores are located in shopping malls and some of our factory outlet stores are located in manufacturers' outlet malls where we depend on obtaining prominent locations in the malls and the overall success of the malls to generate customer traffic. We cannot control the development of new malls, the availability or cost of appropriate locations within existing or new malls or the success of individual malls. Some of our concept stores occupy street locations which are heavily dependent on customer traffic generated by tourism. Any substantial decrease in tourism resulting from the September 11, 2001 attacks, a downturn in the economy or otherwise, is likely to adversely affect sales in our existing stores, particularly those with street

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locations. The effects of these factors could hinder our ability to open retail stores in new markets or reduce sales of particular existing stores, which could negatively affect our operating results.

***Our quarterly revenues and operating results fluctuate as a result of a variety of factors, including seasonal fluctuations in demand for footwear and delivery date delays, which may result in volatility of our stock price.***

Our quarterly revenues and operating results have varied significantly in the past and can be expected to fluctuate in the future due to a number of factors, many of which are beyond our control. For example, sales of footwear products have historically been somewhat seasonal in nature with the strongest sales generally occurring in the third and fourth quarters. Also, delays in scheduling or pickup of purchased products by our domestic customers could negatively impact our net sales and results of operations for any given quarter. As a result of these specific and other general factors, our operating results will likely vary from quarter to quarter and the results for any particular quarter may not be necessarily indicative of results for the full year. Any shortfall in revenues or net income from levels expected by securities analysts and investors could cause a decrease in the trading price of our Class A common stock.

***We face intense competition, including competition from companies with significantly greater resources than ours, and if we are unable to compete effectively with these companies, our market share may decline and our business could be harmed.***

We face intense competition in the footwear industry from other established companies. A number of our competitors have significantly greater financial, technological, engineering, manufacturing, marketing and distribution resources than we do. Their greater capabilities in these areas may enable them to better withstand periodic downturns in the footwear industry, compete more effectively on the basis of price and production and more quickly develop new products. In addition, new companies may enter the markets in which we compete, further increasing competition in the footwear industry.

We believe that our ability to compete successfully depends on a number of factors, including the style and quality of our products and the strength of our brand name, as well as many factors beyond our control. We may not be able to compete successfully in the future, and increased competition may result in price reductions, reduced profit margins, loss of market share, and inability to generate cash flows that are sufficient to maintain or expand our development and marketing of new products, which would adversely impact the trading price of our Class A common stock.

***Obtaining additional capital to fund our operations and finance our growth could make it difficult for us to service our debt obligations.***

If our working capital needs exceed our current expectations, we may need to raise additional capital through public or private equity offerings or debt financings. If we cannot raise needed funds on acceptable terms, we may not be able to successfully execute our growth strategy, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements. To the extent we raise additional capital by issuing debt, it may become difficult for us to meet debt service obligations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. Also, any new equity securities may have greater rights, preferences or privileges than our existing Class A common stock.

***We depend on key personnel to manage our business effectively in a rapidly changing market, and if we are unable to retain existing personnel, our business could be harmed.***

Our future success depends upon the continued services of Robert Greenberg, Chairman of the Board and Chief Executive Officer, Michael Greenberg, President, and David Weinberg, Executive Vice President and Chief Financial Officer. The loss of the services of any of these individuals or any other key employee could harm us. Our future success also depends on our ability to identify, attract and retain additional qualified personnel. Competition for employees in our industry is intense and we may not be successful in attracting and retaining such personnel.

***Our trademarks, design patents and other intellectual property rights may not be adequately protected outside the United States.***

We believe that our trademarks, design patents and other proprietary rights are important to our success and our competitive position. We devote substantial resources to the establishment and protection of our trademarks and design patents on a worldwide basis. In the course of our international expansion, we have, however, experienced conflicts with various third parties that have acquired or claimed ownership rights in certain trademarks similar to ours or have otherwise contested our rights to our trademarks. We have in the past successfully resolved these conflicts through both legal action and negotiated settlements, none of which we believe has had a material impact on our financial condition and results of operations. Nevertheless, we cannot assure you that the actions we have taken to establish and protect our trademarks and other proprietary rights outside the United States will be adequate to prevent imitation of our products by others or to prevent others from seeking to block sales of our products as a violation of the trademarks and proprietary rights of others. Also, we cannot assure you that others will not assert rights in, or ownership of, trademarks, designs and other proprietary rights of ours or that we will be able to successfully resolve these types of conflicts to our satisfaction. In addition, the laws of certain foreign countries may not protect proprietary rights to the same extent as do the laws of the United States. We may face significant expenses and liability in connection with the protection of our intellectual property rights outside the United States and if we are unable to successfully protect our rights or resolve intellectual property conflicts with others, our business or financial condition may be adversely affected.

***Our ability to compete could be jeopardized if we are unable to protect our intellectual property rights or if we are sued for intellectual property infringement.***

We use trademarks on nearly all of our products and believe that having distinctive marks that are readily identifiable is an important factor in creating a market for our goods, in identifying us, and in distinguishing our goods from the goods of others. We consider our Skechers® and S Design® trademarks to be among our most valuable assets and we have registered these trademarks in many countries. In addition, we own many other trademarks, which we utilize in marketing our products. We continue to vigorously protect our trademarks against infringement. We also have a number of design patents covering components and features used in various shoes. We believe that our success depends primarily upon skills in design, research and development, production and marketing rather than upon our patent position. However, we have followed a policy of filing applications for United States and foreign patents on designs that we deem valuable.

We believe that our patents and trademarks are generally sufficient to permit us to carry on our business as presently conducted. We cannot, however, know whether we will be able to secure patents or trademark protection for our intellectual property in the future or that protection will be adequate for future products. Further, we face the risk of ineffective protection of intellectual property rights in the countries where we source and distribute our products. We have been sued for patent and trademark infringement and cannot be sure that our activities do not and will not infringe on the proprietary rights of others. If we are compelled to prosecute infringing parties, defend our intellectual property, or defend ourselves from intellectual property claims made by others, we may face significant expenses and liability which could negatively impact our business or financial condition.

***Energy shortages, natural disasters or a decline in economic conditions in California could increase our operating expenses or adversely affect our sales revenue.***

A substantial portion of our operations are located in California, including 37 of our retail stores, our headquarters in Manhattan Beach and our domestic distribution center in Ontario. Because California has and may in the future experience energy and electricity shortages, we may be subject to increased operating costs as a result of higher electricity and energy rates and may be subject to rolling blackouts which could interrupt our business. Any such impact could be material and adversely affect our profitability. In addition, because a significant portion of our net sales is derived from sales in California, a decline in the economic conditions in California, whether or not such decline spreads beyond California, could materially adversely affect our business. Furthermore, a natural disaster or other catastrophic event, such as an earthquake affecting

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California, could significantly disrupt our business. We may be more susceptible to these issues than our competitors whose operations are not as concentrated in California.

***One principal stockholder is able to control substantially all matters requiring a vote of our stockholders and his interests may differ from the interests of our other stockholders.***

As of March 25, 2002, Robert Greenberg, Chairman of the Board and Chief Executive Officer, beneficially owned 75.1% of the outstanding shares of our Class B common stock and members of Mr. Greenberg's immediate family beneficially owned the remainder of the outstanding shares of our Class B common stock. The holders of shares of our Class A common stock and Class B common stock have identical rights except that holders of Class A common stock are entitled to one vote per share while holders of Class B common stock are entitled to ten votes per share on all matters submitted to a vote of our stockholders. As a result, as of March 25, 2002, Mr. Greenberg held approximately 70.0% of the aggregate number of votes eligible to be cast by our stockholders and together with shares held by other members of his immediate family held approximately 93.1% of the aggregate number of votes eligible to be cast by our stockholders. Therefore, Mr. Greenberg is able to control substantially all matters requiring approval by our stockholders. Matters that require the approval of our stockholders include the election of directors and the approval of mergers or other business combination transactions. Mr. Greenberg also has control over our management and affairs. As a result of such control, certain transactions are not possible without the approval of Mr. Greenberg, including, proxy contests, tender offers, open market purchase programs, or other transactions that can give our stockholders the opportunity to realize a premium over the then-prevailing market prices for their shares of our Class A common stock. The differential in the voting rights may adversely affect the value of our Class A common stock to the extent that investors or any potential future purchaser view the superior voting rights of our Class B common stock to have value.

***Our charter documents and Delaware law may inhibit a takeover, which may cause a decline in the value of our stock.***

Provisions of Delaware law, our certificate of incorporation, or our bylaws could make it more difficult for a third party to acquire us, even if closing such a transaction would be beneficial to our stockholders. Mr. Greenberg's substantial beneficial ownership position, together with the authorization of preferred stock, the disparate voting rights between Class A common stock and Class B common stock, the classification of the Board of Directors and the lack of cumulative voting in our certificate of incorporation and bylaws, may have the effect of delaying, deferring or preventing a change in control, may discourage bids for our Class A common stock at a premium over the market price of the Class A common stock and may adversely affect the market price of the Class A common stock.

### **Risks Related to this Offering**

***The notes are subordinated.***

The notes are unsecured and subordinated in right of payment to all of our existing and future senior indebtedness, which includes all indebtedness not expressly subordinated to the notes. In the event of our bankruptcy, liquidation or reorganization or upon acceleration of the notes due to an event of default under the Indenture and in certain other events, our assets will be available to pay obligations on the notes only after all senior indebtedness has been paid. As a result, there may not be sufficient assets remaining to pay amounts due on any or all of the outstanding notes. The notes also are structurally subordinated to the liabilities, including trade payables, of any of our subsidiaries. Neither we nor our subsidiaries are prohibited from incurring additional debt under the Indenture, including senior indebtedness. If we or our subsidiaries were to incur additional debt or liabilities, our ability to pay our obligations on the notes could be adversely affected. As of December 31, 2001, we had approximately \$282.0 million of senior indebtedness outstanding of which our subsidiaries had approximately \$13.1 million of indebtedness outstanding. We may from time to time incur additional debt, including senior indebtedness.

***We may be unable to redeem the notes upon a Change in Control.***

Upon a Change in Control, as described under “Description of the Notes — Repurchase at Option of Holders upon a Change in Control,” you may require us to redeem all or a portion of your notes. Some of the events constituting a Change in Control in addition to the act of repurchasing the notes could cause an event of default or be prohibited or limited by the terms of our current credit facility or any other current or future credit agreements or other agreements relating to our indebtedness. As a result, any repurchase of the notes in cash could, absent a waiver from our lenders, be prohibited until such indebtedness is paid in full. Further, we may not have the financial resources, or be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase right deliver to us. Our failure to redeem tendered notes would constitute an event of default under the Indenture, which might constitute a default under the terms of our other indebtedness. In these circumstances, or if a Change in Control would constitute an event of default under our senior indebtedness, the subordination provisions of the Indenture would restrict our ability to make payments to the holders of the notes. The term “Change in Control” is limited to certain specified transactions and may not include other events that might adversely affect our financial condition. Our obligation to offer to redeem the notes upon a Change in Control would not necessarily afford you protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction.

***There is no public market for the notes being offered and restrictions on transfer of the notes and the Class A common stock issuable upon conversion of the notes may significantly impair the liquidity of the notes.***

The notes are being sold pursuant to an exemption from registration under the Securities Act and applicable state or foreign securities laws and neither the notes nor the Class A common stock issuable upon conversion of the notes may be resold by purchasers unless the notes and the Class A common stock issuable upon conversion of the notes are subsequently registered under the Securities Act or an exemption for the registration requirements of the Securities Act and applicable state or foreign securities laws is available for such resale. We have agreed to file with the SEC and to use our reasonable efforts to cause to become effective a registration statement for the resale of the notes and the Class A common stock issuable upon conversion of the notes.

While the outstanding notes are eligible for trading in The Portal Market, there is no public market for the notes, and we cannot assure you as to:

- the liquidity of any such market that may develop;
- your ability to sell the notes; or
- the price at which you would be able to sell the notes.

If such a market were to exist, the notes could trade at prices that may be higher or lower than the principal amount or purchase price, depending on many factors, including prevailing interest rates, the market for similar notes, and our financial performance. We do not presently intend to apply for the listing of the notes on any securities exchange or for inclusion of the notes in the automated quotation system of the National Association of Securities Dealers, Inc.

CIBC World Markets Corp. (the “Initial Purchaser”) has advised us that it presently is making a market in the notes. The Initial Purchaser is not obligated, however, to make a market in the notes, and any such market-making may be discontinued at any time at the sole discretion of the Initial Purchaser. In addition, such market-making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, no assurance can be given as to the development or liquidity of any market for the notes.

***Our share price has been and may continue to be volatile, which might adversely affect the trading price of the notes.***

Fluctuations in the market price of our Class A common stock may affect the trading price of the notes. In addition, if you convert any notes, the value of the Class A common stock you receive may fluctuate

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significantly. The market price of our Class A common stock has fluctuated substantially in the past. The sales price of our Class A common stock has ranged from a low of \$3.25 at January 18, 2000 to a high of \$40.30 at May 21, 2001 and the closing price of our Class A common stock was \$21.49 at May 7, 2002, as reported on the New York Stock Exchange. The market price of our Class A common stock will continue to be subject to significant fluctuations in the future in response to a variety of factors, including the risk factors discussed above and the following:

- future announcements concerning our business or that of our competitors or customers;
- the introduction of new products or changes in product pricing policies by us or our competitors;
- litigation regarding proprietary rights or other matters;
- changes in analysts' earnings estimates;
- developments in the financial markets;
- quarterly fluctuations in operating results; and
- general conditions in the footwear industry.

***The sales of substantial amounts of shares of our Class A common stock in the public market or the prospect of such sales could materially and adversely affect the market price of the Class A common stock.***

As of March 25, 2002, we had outstanding 15,667,855 shares of Class A common stock. In addition, we had outstanding 21,246,777 shares of Class B common stock, all of which are convertible into shares of Class A common stock on a share-for-share basis at the election of the holder or upon transfer or disposition to certain persons. The 15,667,855 shares of Class A common stock are eligible for sale in the public market without restriction. The 21,246,777 shares of Class B common stock are restricted in nature and are saleable pursuant to Rule 144 under the Securities Act.

As of March 25, 2002, Robert Greenberg, Chairman of the Board and Chief Executive Officer, and Michael Greenberg, President, beneficially owned an aggregate of 17,429,945 shares of Class B common stock. Robert and Michael Greenberg have also received certain registration rights to sell shares of Class A common stock which will be issuable upon conversion of their shares of Class B common stock in the public market. Shares of Class A common stock reserved for issuance pursuant to our Stock Option Plan and our 1998 Employee Stock Purchase Plan have also been registered under the Securities Act.

***We may not be able to refinance the notes if required or if we so desire.***

We may need or desire to refinance all or a portion of the notes at maturity. We cannot assure you that we will be able to refinance the notes on commercially reasonable terms, if at all. If we are not able to refinance the notes on terms favorable to us, we may not have sufficient funds to pay the principal amount or repurchase price due.



## USE OF PROCEEDS

We will not receive any proceeds from the sale by any selling security holder of the notes or the shares of Class A common stock issuable upon conversion of the notes.

## RATIO OF EARNINGS TO FIXED CHARGES

The following table displays our ratio of earnings to fixed charges:<sup>(1)</sup>

	Year Ended December 31,				
	1997	1998	1999	2000	2001
Ratio of earnings to fixed charges	3.73x	3.91x	5.70x	7.86x	6.35x

(1) Earnings used in computing the ratio of earnings to fixed charges consist of net earnings before income taxes plus interest expense. Fixed charges include interest expensed or capitalized.

## PRICE RANGE OF CLASS A COMMON STOCK

Our Class A common stock began trading on the New York Stock Exchange on June 9, 1999 after we completed the initial public offering of 7,000,000 shares of our Class A common stock at \$11.00 per share. Our Class A common stock trades under the symbol "SKX". The following table sets forth, for the periods indicated, the high and low sales prices of our Class A common stock.

The following table sets forth, for the periods indicated, the high and low sales prices of our Class A common stock since it began trading as reported on the New York Stock Exchange:

	High	Low
<b>2000:</b>		
First Quarter	\$ 7.69	\$ 3.25
Second Quarter	16.31	7.50
Third Quarter	19.94	12.50
Fourth Quarter	16.75	11.44
<b>2001:</b>		
First Quarter	\$32.20	\$14.50
Second Quarter	40.30	22.80
Third Quarter	29.40	11.33
Fourth Quarter	15.05	10.00
<b>2002:</b>		
First Quarter	\$19.60	\$12.80
Second Quarter (through May 7, 2002)	24.40	18.00

As of March 25, 2002, there were 104 holders of record of our Class A common stock (including holders who are nominees for an undetermined number of beneficial owners) and 9 holders of record of our Class B common stock. These figures do not include beneficial owners who hold shares in nominee name. The Class B common stock is not publicly traded but each share is convertible upon request of the holder into one share of Class A common stock.



## DIVIDEND POLICY

In May 1992, we elected to be treated for federal and state income tax purposes as an S Corporation under Subchapter S of the Internal Revenue Code of 1986, as amended (the “Code”), and comparable state laws. As a result, our earnings, since such initial election, were included in the taxable income of our stockholders for federal and state income tax purposes, and we were not subject to income tax on such earnings, other than franchise and net worth taxes. Prior to the closing of our initial public offering of our Class A common stock on June 9, 1999, we terminated our S Corporation status, and since then we have been treated for federal and state income tax purposes as a corporation under Subchapter C of the Code and, as a result, are subject to state and federal income taxes. By reason of our treatment as an S Corporation for federal and state income tax purposes, we have since inception provided to our stockholders funds for the payment of income taxes on our earnings as well as the conversion from an S Corporation to a C Corporation during 1999. We declared distributions relating to our S Corporation status of \$35.4 million and \$7.9 million in 1999 and 1998, respectively. Purchasers of shares in the initial public offering of our Class A common stock on June 9, 1999 did not receive any portion of these S Corporation distributions. Since the termination of our S Corporation status, earnings have been and will be retained for the foreseeable future in the operations of the business. We have not declared or paid any cash dividends on our Class A common stock and do not anticipate paying any cash dividends in the foreseeable future. Our current policy is to retain all of our earnings to finance the growth and development of our business.

**SELECTED CONSOLIDATED FINANCIAL DATA**

(in thousands, except per share and financial ratios)

The following table presents selected historical consolidated financial information for each of the five years in the period ended December 31, 2001, which has been derived from our consolidated financial statements audited by KPMG LLP. The selected historical consolidated financial information does not purport to indicate results of operations as of any future date or for any future period. The selected historical consolidated financial information has been derived from and should be read in conjunction with “Management’s Discussion and Analysis of Results of Operations and Financial Condition,” our audited consolidated financial statements and notes thereto, which are incorporated by reference in this prospectus.

	Year Ended December 31,				
	1997	1998	1999	2000	2001
<b>Statement of Earnings Data:</b>					
Net sales	\$183,827	\$372,680	\$424,601	\$675,036	\$960,385
Cost of sales	115,104	218,100	249,993	390,811	554,205
Gross profit	68,723	154,580	174,608	284,225	406,180
Royalty income, net	894	855	668	316	(303)
	69,617	155,435	175,276	284,541	405,877
<b>Operating expenses:</b>					
Selling	21,584	49,983	57,332	77,451	111,401
General and administrative	32,397	71,461	79,114	125,827	205,989
	53,981	121,444	136,446	203,278	317,390
Earnings from operations	15,636	33,991	38,830	81,263	88,487
<b>Other income (expense):</b>					
Interest expenses	(4,186)	(8,631)	(6,554)	(9,230)	(13,852)
Other, net	(37)	(239)	415	318	1,320
	(4,223)	(8,870)	(6,139)	(8,912)	(12,532)
Earnings before income taxes	11,413	25,121	32,691	72,351	75,955
Income taxes	390	650	8,635	28,600	28,685
Net earnings	\$ 11,023	\$ 24,471	\$ 24,056	\$ 43,751	\$ 47,270
<b>Net earnings per share:<sup>(1)</sup></b>					
Basic	\$ .40	\$ .88	\$ .76	\$ 1.24	\$ 1.30
Diluted	\$ .37	\$ .80	\$ .73	\$ 1.20	\$ 1.24
<b>Weighted average shares:<sup>(1)</sup></b>					
Basic	27,814	27,814	31,765	35,142	36,409
Diluted	29,614	30,610	33,018	36,563	38,059
<b>Pro Forma Earnings Data:<sup>(2)</sup></b>					
Earnings before income taxes	\$ 11,413	\$ 25,121	\$ 32,691		
Income taxes	4,565	10,048	12,880		
Net earnings	\$ 6,848	\$ 15,073	\$ 19,811		
<b>Net earnings per share:<sup>(1)</sup></b>					
Basic	\$ .25	\$ .54	\$ .62		
Diluted	\$ .23	\$ .49	\$ .60		
<b>Consolidated Cash Flow Data:</b>					
Net cash (used in) provided by operating activities	\$ (2,132)	\$ (4,251)	\$ 13,105	\$ (1,009)	\$ (1,720)
Net cash used in investing activities	(6,751)	(9,448)	(10,846)	(21,846)	(31,518)
Net cash (used in) provided by financing activities	10,167	23,179	(2,365)	20,800	39,978

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	Year Ended December 31,				
	1997	1998	1999	2000	2001
<b>Selected Operating Data:</b>					
Ratio of earnings to fixed charges <sup>(3)</sup>	3.73x	3.91x	5.70x	7.86x	6.35x
EBITDA <sup>(4)</sup>	\$18,192	\$36,743	\$43,105	\$87,579	\$105,110

  

	As of December 31,				
	1997	1998	1999	2000	2001
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 1,462	\$ 10,942	\$ 10,836	\$ 8,781	\$ 15,554
Working capital	17,081	23,106	65,003	93,305	139,972
Total assets	90,881	146,284	177,914	303,400	407,486
Total debt	39,062	70,933	33,950	85,321	115,931
Stockholders' equity	11,125	27,676	86,000	134,046	199,016

- (1) Basic earnings per share represents net earnings divided by the weighted-average number of outstanding shares of our common stock for the period. Diluted earnings per share reflects the potential dilution that could occur if options to issue common stock were exercised or converted into common stock. The weighted average diluted shares outstanding gives effect to our sale by (i) stockholder distributions paid or declared from January 1, 1998 to June 7, 1999, the S Corporation termination date, in excess of (ii) the S Corporation earnings from January 1, 1998 to December 31, 1998 for 1997 through 1998, and January 1, 1999 to June 7, 1999 for 1999, based on an initial public offering price of \$11 per share, net of underwriting discounts.
- (2) Reflects adjustments for federal and state income taxes as if we had been taxed as a C corporation, at the assumed rate of 40%, rather than as an S corporation for periods prior to our initial public offering on June 7, 1999.
- (3) Earnings used in computing the ratio of earnings to fixed charges consist of net earnings before income taxes plus interest expense. Fixed charges include interest expensed or capitalized.
- (4) EBITDA is calculated as net earnings before net interest and income taxes, plus depreciation and amortization. EBITDA is presented because EBITDA is a widely accepted financial indicator of a company's ability to service and incur debt. EBITDA should not be construed as an alternative to earnings from operations (as determined in accordance with generally accepted accounting principles) as an indicator of our operating performance, or as an alternative to cash flows from operating activities (as determined in accordance with generally accepted accounting principles) as a measure of liquidity, and this measure may not be comparable to similarly titled measures by other entities.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following commentary should be read in conjunction with the financial statements and related notes incorporated by reference in this prospectus. Our discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives and intentions. Our actual results may differ materially from those indicated in such forward-looking statements. See "Forward-Looking Statements."*

### Overview

We design, market and sell contemporary footwear for men, women and children under the Skechers brand. Our footwear is sold through a wide range of department stores and leading specialty retail stores, a growing network of our own retail stores and our e-commerce website. Our objective is to continue to profitably grow our domestic operations, while leveraging our brand name to expand internationally.

We generate revenues from three principal sources:

- *Wholesale.* We sell footwear directly to department stores and specialty retail stores both domestically and internationally.
- *Retail.* We own and operate our own retail stores both domestically and, on a smaller scale, internationally through three integrated retail formats. Our retail formats are as follows:

*Concept Stores.* Our concept stores are located in marquee street locations and high performing regional malls, while promoting awareness of the Skechers brand and showcasing a broad assortment of our in-season footwear styles.

*Factory Outlet Stores.* Our factory outlet stores are generally located in manufacturers' outlet centers and provide opportunities to sell an assortment of in-season, discontinued and excess merchandise at lower price points.

*Warehouse Outlet Stores.* Our freestanding warehouse outlet stores appeal to our most value conscious customers and enable us to liquidate excess merchandise, discontinued lines and odd-size inventory in a cost-efficient manner.

- *Distributors.* Internationally, we sell our footwear to our foreign distributors who distribute such footwear to department stores and specialty retail stores in Europe, Asia, Latin America, South America and numerous other countries and territories.

The substantial portion of our revenues are derived from domestic wholesale sales. Typically, retail sales achieve higher gross margins as a percentage of net sales than wholesale sales. Sales through foreign distributors result in lower gross margins as a percentage of net sales than retail or wholesale sales. None of our domestic retail sales, international wholesale sales, international retail sales, or international distributor sales comprised more than 10% of our consolidated net sales for either fiscal 1999, 2000 or 2001.

We have implemented a strategy of controlling the growth of the distribution channels through which our products are sold in order to protect the Skechers brand name, properly secure customer accounts and better manage the growth of the business. We seek wholesale accounts that we believe can best support the Skechers brand name in the market as part of our efforts to expand our wholesale distribution. We seek to selectively open retail stores in high profile, high traffic locations in major metropolitan areas both domestically and internationally. Domestically, we are currently planning to open approximately 10 to 15 retail stores during fiscal 2002 as compared to 26 in fiscal 2001. We seek to increase the number of international wholesale accounts which we sell directly to, thereby reducing our reliance on foreign distributors and may seek to open additional international retail stores on a selected basis.

We have realized rapid growth since inception, increasing net sales at a compound annual growth rate of 40.1% from \$90.8 million in 1994 to \$960.4 million in 2001. This momentum continued into 2001 with a 42.3% increase in sales and an 8.0% increase in net earnings compared to 2000. However, given the current global

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economic environment and the world events triggered on September 11, 2001, we currently do not anticipate achieving similar sales growth during the year ending December 31, 2002. Based on our current estimates, we anticipate sales levels during the first six months of fiscal 2002 to be consistent with the first six months of fiscal 2001, and any sales growth to be realized during the second half of 2002. These estimates may be affected by the continued threat of terrorist attacks throughout the world and any military action taken by the United States and other nations that could cause additional significant disruption to commerce throughout the world.

As our sales growth accelerated, we focused on investing in our infrastructure to support continued expansion in a disciplined manner. During 2000, we expanded our distribution and administrative facilities, hired additional personnel, developed product sourcing and quality control offices in China and Taiwan, upgraded our management information systems, opened additional retail stores and expanded the offerings available through our web site. During 2001, we made planned infrastructure additions to support the addition of 26 new domestic retail stores, commenced our international expansion with the establishment of international subsidiaries in the United Kingdom, France and Germany to manage our direct selling efforts in those areas, opened our first three international flagship retail stores and increased the number of product lines to expand the breadth of our product offerings. The fixed costs incurred during this expansion period have not yet been leveraged over a full year's sales. We established this infrastructure to achieve economies of scale in anticipation of continued increases in sales. Because expenses relating to this infrastructure are fixed, at least in the short-term, operating results and margins would be adversely affected if we do not achieve our anticipated sales growth. For example, due in large part to the slowdown in the global economy, our net sales in 2001 were lower than anticipated. This lower level of sales adversely affected our operating results for 2001 and could continue to do so in 2002 and beyond.

Our gross margins have improved annually from 41.1% in 1999 to 42.1% in 2000 to 42.3% in 2001. During the fourth quarter ended December 31, 2001, our gross margin was 39.7% compared to 43.3% in the same period during 2000. Given the continuing weak retail environment, we currently anticipate that margins during the first half of fiscal 2002 will be consistent with gross margins during the fourth quarter of fiscal 2001 and, if any, improvement to take place during the second half of fiscal 2002. Operating margin as a percentage of net sales increased from 9.1% in 1999 to 12.0% in 2000 but decreased to 9.2% during 2001. Increasing sales and maintaining or improving gross margins and operating margins depends on various factors, including, strength of our brand name, competitive conditions and our ability to efficiently manage sales through all distribution channels. In the future, our rate of growth will be dependent upon, among other things, the continued success of our efforts to expand our footwear offerings within the Skechers brand or developing alternative, successful brands. We can not assure you that the rate of growth will not decline in future periods or that we will improve or maintain gross margins or operating margins.

Given the increase in 2001 of selling and general and administrative expenses on both an absolute dollar basis and as a percentage of net sales, and given the state of the global economy following the events of September 11, 2001, we initiated various cost cutting measures in the fourth quarter of 2001 to better leverage our cost infrastructure over our newly expanded operations. From a selling expense standpoint, we reorganized our sales force by consolidating some regions, which resulted in staff reductions. We also eliminated our mail order operations and related selling expenses associated with the mail order catalog, and we estimate the annual savings from these actions will be approximately \$6.0 million in 2002. From the general and administrative expense standpoint, we eliminated some administrative positions and reduced temporary staff at our distribution center without reducing our order fulfillment rate.

Notwithstanding our cost cutting measures, we remain committed to the overall marketing strategy that has been largely responsible for the increase in the market presence, product visibility and product demand over the past three years. We have and continue to increase our advertising budget consistent with projected sales, which has included such avenues as magazines, television, trade shows, billboards, and buses. We endeavor to spend approximately 8% to 10% of annual net sales in the marketing of Skechers footwear through advertising, promotions, public relations, trade shows and other marketing efforts.

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We believe that selective licensing of the Skechers brand name to non-footwear-related manufacturers may broaden and enhance the Skechers image without requiring us to expend significant capital investments or incur significant incremental operating expenses. Although we have licensed certain manufacturers to produce and market certain Skechers products on a limited basis, to date we have not derived any significant royalty income from these licensing arrangements. Royalty income is recognized as revenue when earned. We believe that revenues from licensing agreements will not be a material source of growth for us in the near term; however, we believe that licensing arrangements may present attractive long-term opportunities with minimal near-term costs.

We contract with third parties for the manufacture of all our products. We do not own or operate any manufacturing facilities. In 2001, the top four suppliers of our products accounted for 51.9% of our total purchases, but no one manufacturer accounted for more than 20.0%. To date, substantially all products are purchased in U.S. dollars, but this may not continue to be the case. We believe the use of independent manufacturers increases our production flexibility and capacity yet at the same time allows us to substantially reduce capital expenditures and avoid the costs of managing a large production work force. Substantially all of our products are produced in China. We finance our production activities in part through the use of interest-bearing open purchase arrangements with certain of our Asian suppliers. These facilities currently bear interest at a rate between 0.5% and 1.5% with financing for 30 to 60 days. We believe that the use of these arrangements affords us additional liquidity and flexibility.

### **Year Ended December 31, 2001 Compared To The Year Ended December 31, 2000**

#### *Net sales*

Net sales for 2001 increased 42.3% to \$960.4 million compared to \$675.0 million in 2000. The increase in net sales was due in part to a 37.0% increase in domestic wholesale revenues over 2000 levels as a result of increased sales in all product lines, primarily *Skechers Sport* for women and *Skechers Kids* lines, the introduction of three new product lines during 2001, and additional styles added within each product line. Domestic wholesale volume increased to 42.1 million pairs in 2001 from 29.4 million pairs in 2000. Domestic retail sales increased 50% over 2000 levels largely due to the addition of 26 retail stores during 2001. Net sales from our direct mail and web based distribution channels remained consistent in 2001 as compared to 2000. However, in October 2001, we elected to discontinue our mail order and catalog operations, which represented less than 1% of net sales in 2001, although we continue to offer a selected assortment of merchandise through our interactive website.

During 2001, total international sales increased 85.7% over 2000 levels. International sales consist of distributor sales, which increased 47.4% due to continued acceptance of our product offerings in the international marketplace. International wholesale revenues increased substantially from nominal levels in 2000 due to marketing and advertising campaigns in support of the establishment of our three international subsidiaries located in the United Kingdom, France and Germany, where we began to sell direct to department stores and specialty retailers in 2001. During 2001, we generated our first international retail sales as we opened our first three international flagship retail stores located in the United Kingdom, France and Germany.

#### *Gross Profit*

Gross profit for 2001 was \$406.2 million, an increase of 42.9% over \$284.2 million in 2000. Gross margin was 42.3% for 2001 compared to 42.1% for 2000. The slight margin increase was the result of reduced cargo costs partly offset by reduced margins during the three months ended December 31, 2001 for price concessions given to our wholesale customers and price reductions at our factory outlet and warehouse outlet stores to help stimulate inventory sell through at the retail level.

#### *Selling expenses*

Selling expenses for 2001 were \$111.4 million, an increase of 43.8% over last year's \$77.5 million. Selling expenses as a percentage of net sales increased slightly to 11.6% from 11.5% in 2000. The increase in the level

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of spending was primarily due to increased advertising in both print and television media and additional advertising to support the increase in sales activities in the United Kingdom, Germany and France where we commenced selling direct to department stores and specialty retailers. During 2001 advertising expenses were \$86.6 million, or 9.0% of net sales, compared to \$59.1 million, or 8.8% of net sales in 2000.

### *General and administrative expenses*

General and administrative expenses for 2001 were \$206.0 million compared to \$125.8 million in 2000. General and administrative expenses as a percentage of net sales was 21.4% in 2001 compared to 18.6% in 2000. The increase in general and administrative expenses in absolute dollars and as a percentage of net sales was due to planned infrastructure additions to support the 26 domestic retail stores added during 2001 and to establish operating entities, and flagship retail stores, in the United Kingdom, France and Germany to support our direct selling efforts in those countries. In addition, we increased our distribution capacity with facility and capital asset additions and enhanced our information systems to support the increase in sales volume.

### *Interest expense*

Interest expense increased to \$13.9 million in 2001 from \$9.2 million in 2000. The increase was due to increased short-term borrowings to support our working capital requirements and retail store additions and increased capital asset financing to support the increase in sales volume and capacity expansion.

### *Other, net*

Other income increased to \$1.3 million in 2001 compared to \$318,000 in 2000. The increase in other income is due to rental income related to the leasing of offices at our administrative office building and legal settlements, partially offset by the disposal of fixed assets. We expect rental income to decrease during 2002 as tenant leases expire.

### *Income taxes*

The effective tax rate in 2001 was 37.8% compared to 39.5% in 2000. The decrease in the effective tax rate is due to changes in income in differing tax jurisdictions as a result of our international expansion. We are expanding our international operations and plan to reinvest any undistributed earnings from our non-U.S. subsidiaries, thereby indefinitely postponing their remittance. As a result, we do not plan to provide for deferred income taxes on any accumulated undistributed earnings that our non-U.S. subsidiaries earn in the future.

## **Year Ended December 31, 2000 Compared To The Year Ended December 31, 1999**

### *Net sales*

Net sales for 2000 were \$675.0 million, an increase of \$250.4 million or 59.0% from \$424.6 million in 1999. The increase was due in large part to a 59% increase in our domestic wholesale revenues over 1999 levels. In addition, we realized a 51.5% increase in domestic wholesale units sold to 29.4 million units in 2000 from 19.4 million units in 1999. The increase in the domestic wholesale business is primarily due to expansion of the domestic sales force, continued consumer acceptance of our product offerings, and increased marketing campaigns. During 2000, we continued to introduce, and generate sales from, new product categories in the women's, men's, children's athletic shoes, and our men's quality dress line. Domestic retail sales for 2000 increased 50% from 1999 levels due to increased sales at stores open for at least one year and from the addition of 10 new locations added during 2000. Net sales from our direct mail and web based distribution channels increased substantially in 2000 largely due to an increase in the number of direct mailings and an increase in the circulation of the mailings.

Fiscal 2000 international sales consisted almost entirely of sales through distributors and increased 48.4% over 1999 levels primarily due to increased brand acceptance and increased advertising campaigns. During

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2000, we began our international direct selling efforts, through which we sold direct to department stores and specialty retailers and therefore generated nominal sales in 2000.

### ***Gross profit***

In 2000, gross profit increased to \$284.2 million, a 62.8% increase from \$174.6 million in 1999. Gross margin was 42.1% in 2000 compared to 41.1% in 1999. The increase in gross margin was due to (i) an increase in the proportion of sales derived from our women's footwear line, which have a higher gross margin than the men's footwear line, (ii) fewer markdowns as a percentage of sales and (iii) increased sales at retail.

### ***Selling expenses***

Selling expenses were \$77.5 million in 2000, an increase of 35.1% over \$57.3 million in 1999. However, selling expense as a percentage of net sales decreased to 11.5% in 2000 from 13.5% in 1999. The increase in absolute dollars was primarily due to increased print advertising, both internationally and domestically, increased promotional expenses, and additional sales commissions due to increased sales volume. During 2000, advertising expenses were \$59.1 million, or 8.8% of net sales, compared to \$47.4 million, or 11.2% of net sales in 1999.

### ***General and administrative expenses***

General and administrative expenses in 2000 were \$125.8 million compared to \$79.1 million in 1999. As a percentage of sales, general and administrative expenses remained at 18.6% for both 2000 and 1999. The increase in absolute dollars was primarily due to additional personnel costs reflected in the form of additional salary, wages and temporary help costs to support the higher level of sales, and increased warehousing and distribution costs associated with increased sales volume. In addition, we realized increased operating costs from the 10 new retail facilities added during 2000, and, although to a lesser extent, we incurred additional general and administrative expenses related to infrastructure additions to support our international operations.

### ***Interest expense***

Interest expense increased to \$9.2 million in 2000 from \$6.6 million in 1999. The increase was due to increased financing costs associated with additional borrowings to support our working capital requirements, capital additions made during the year, increased purchases of inventory and the build up of accounts receivable commensurate with our growth.

### ***Other, net***

Other, net consists primarily of a gain from the settlement of commercial lawsuits and net gains from foreign exchange rate fluctuations.

### ***Income taxes***

The 2000 effective tax rate was 39.5%, which is comparable to the pro forma effective rate of 39.4% in 1999. The prior years pro forma taxes represent those taxes that would have been reported had we been subject to federal and state income taxes as a C corporation for the full year. We continually review and evaluate various tax strategies to minimize our tax liability.

We are expanding our international operations and plan to reinvest any undistributed earnings from our non-U.S. subsidiaries, thereby indefinitely postponing their remittance. As a result, we do not plan to provide for deferred income taxes on any accumulated undistributed earnings that our non-U.S. subsidiaries earn in the future. Assuming that our international operations are successful, our effective tax rates should decrease accordingly.



## Liquidity And Capital Resources

Our capital needs are derived primarily from working capital requirements and the continued growth of the business. Our working capital at December 31, 2001 was \$140.0 million, an increase of \$46.7 million over working capital of \$93.3 million at December 31, 2000. The increase in working capital was primarily due to the increase in accounts receivable, inventory, and prepaid and other current assets consisting primarily of prepaid income taxes offset by increased short-term borrowings and to a lesser extent accounts payable and accrued expenses. In April 2002, we sold \$90.0 million of convertible notes for aggregate net proceeds of \$85.4 million, of which \$65.0 million was used to repay amounts owing under our line of credit and the remaining proceeds will be used for working capital.

Inventories increased \$46.0 million or 41.1% to \$157.7 million at December 31, 2001, from \$111.7 million at December 31, 2000. Our sales backlog of \$222.2 million at December 31, 2001 is consistent with the level at December 31, 2000. Our commitment to inventory at December 31, 2001, which includes inventory on hand, inventory in transit (for which we have title), and merchandise in process, for which we do not have title, increased slightly over our commitment to inventory at December 31, 2000. Also, the increase in our inventories reflects a greater breadth of products and support for the expansion of our international operations. At December 31, 2001, we had purchase commitments of approximately \$89.4 million.

Net cash used in operating activities for the year ended December 31, 2001 was \$1.7 million, compared to cash used in operating activities of \$1.0 million for the same period last year. The increase in cash used in operating activities was primarily due to increases in receivables, inventories, and prepaid taxes.

Net cash used in investing activities was \$31.5 million for the year ended December 31, 2001, an increase of \$9.7 million over the \$21.8 million for the year ended December 31, 2000. The increase in cash used in investing activities was due to increased capital expenditures related to the addition of 26 domestic retail stores, the addition of three international stores, capital expenditures related to establishing our international operating units, and the acquisition of real properties in Manhattan Beach, California that are expected to be converted into an administrative office facility.

Net cash provided by financing activities for the year ended December 31, 2001 was \$40.0 million, compared to \$20.8 million for the year ended December 31, 2000. The net cash provided by financing activities was derived primarily from our short-term credit facilities, and, to a lesser extent, proceeds from the exercise of stock options and our employee stock purchase plan, partially offset by reductions in long-term debt.

In July 2001, we renegotiated our line of credit facility which now provides for borrowings of up to \$150.0 million, with actual borrowings limited to available collateral and certain limitations on total indebtedness (approximately \$54.2 million of availability as of December 31, 2001) with CIT Group, a subsidiary of TYCO, as agents for the lenders. At December 31, 2001, there was approximately \$84.2 million outstanding under the revolving line of credit. The revolving line of credit bears interest at prime rate (4.75% at December 31, 2001) minus 0.5%. Interest on the line of credit is payable monthly in arrears. The revolving line of credit expires on December 31, 2003. The revolving line of credit provides a sub-limit for letters of credit of up to \$30.0 million to finance our foreign purchases of merchandise inventory. As of December 31, 2001, we had approximately \$5.4 million of letters of credit under the revolving line of credit. In February 2002, we borrowed an additional \$43.0 million under the line of credit. The credit facility contains covenants indicating that stockholders' equity shall not decrease by more than 20% in any calendar quarter, and limits the payment of dividends if we are in default of any provision of the agreement. We were in compliance with these covenants as of December 31, 2001. In April 2002, we repaid amounts owing under the line of credit with a portion of the net proceeds from the sale of the notes.

We finance our production activities in part through the use of interest-bearing open purchase arrangements with certain of our Asian manufacturers. These facilities currently bear interest at a rate between 0.5% and 1.5% for 30 to 60 days financing, depending on the factory.

We believe that anticipated cash flows from operations, available borrowings under our revolving line of credit, cash on hand and our financing arrangements will be sufficient to provide us with the liquidity necessary

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to fund our anticipated working capital and capital requirements through fiscal 2002. However, in connection with our growth strategy, we will incur significant working capital requirements and capital expenditures. Our future capital requirements will depend on many factors, including, but not limited to, the levels at which we maintain inventory, the market acceptance of our footwear, the levels of promotion and advertising required to promote our footwear, the extent to which we invest in new product design and improvements to our existing product design and the number and timing of new store openings. To the extent that available funds are insufficient to fund our future activities, we may need to raise additional funds through public or private financings. We cannot assure you that additional financing will be available or that, if available, it can be obtained on terms favorable to our stockholders and us. Failure to obtain such financing could delay or prevent our planned expansion, which could adversely affect our business, financial condition and results of operations. In addition, if additional capital is raised through the sale of additional equity or convertible securities, dilution to our stockholders could occur.

### **Critical Accounting Policies**

*Use of Estimates.* The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Specifically, management must make estimates in the following areas:

*Allowance for bad debts, returns, and customer chargebacks.* We insure selected customer account balances that are both greater than \$200,000 and accepted by the insurance company should our customer not pay. We also provide a reserve against our receivables for estimated losses that may result from our customers' inability to pay, and disputed and returned items. We determine the amount of the reserve by analyzing known uncollectible accounts, aged receivables, economic conditions in the customers' country or industry, historical losses and our customers' credit-worthiness. Amounts later determined and specifically identified to be uncollectible are charged or written off against this reserve. To minimize the likelihood of uncollectibility, customers' credit-worthiness is reviewed periodically based on external credit reporting services and our experience with the account and adjusted accordingly. Should a customer's account become past due, we generally place a hold on the account and discontinue further shipments to that customer, minimizing further risk of loss. The likelihood of a material loss on an uncollectible account would be mainly dependent on deterioration in the overall economic conditions in a particular country or environment. Reserves are fully provided for all probable losses of this nature. Gross trade accounts receivable balance was \$127.4 million and the allowance for doubtful accounts was \$7.1 million at December 31, 2001.

*Inventory adjustments.* Inventories are stated at lower of cost or market. We review our inventory on a regular basis for excess and slow moving inventory based on prior sales and net realizable value. The likelihood of any material inventory write-down is dependent primarily on consumer demand and competitor product offerings. Inventories were stated at \$157.7 million at December 31, 2001.

*Valuation of intangible and other long-lived assets.* When circumstances warrant, we assess the impairment of intangible and other long-lived assets that require us to make assumptions and judgments regarding the carrying value of these assets. The assets are considered to be impaired if we determine that the carrying value may not be recoverable based upon our assessment of the following events or changes in circumstances:

- the asset's ability to continue to generate income;
- loss of legal ownership or title to the asset;
- significant changes in our strategic business objectives and utilization of the asset(s); or
- the impact of significant negative industry or economic trends.

If the assets are considered to be impaired, the impairment we recognize is the amount by which the carrying value of the assets exceeds the fair value of the assets. In addition, we base the useful lives and related

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amortization or depreciation expense on our estimate of the period that the assets will generate revenues or otherwise be used by us. If a change were to occur in any of the above-mentioned factors or estimates, the likelihood of a material change in our reported results would increase.

*Litigation reserves.* Estimated amounts for claims that are probable and can be reasonably estimated are recorded as liabilities in the consolidated balance sheets. The likelihood of a material change in these estimated reserves would be dependent on new claims as they may arise and the favorable or unfavorable outcome of the particular litigation. Both the amount and range of loss on the remaining pending litigation is uncertain. As such, we are unable to make a reasonable estimate of the liability that could result from unfavorable outcomes in litigation. As additional information becomes available, we will assess the potential liability related to our pending litigation and revise our estimates. Such revisions in our estimates of the potential liability could materially impact our results of operation and financial position.

*Valuation of deferred income taxes.* Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. The likelihood of a material change in our expected realization of these assets depends on future taxable income, and the effectiveness of our tax planning and strategies among the various tax jurisdictions in which we operate.

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**Quarterly Results of Operations**

The following table presents unaudited consolidated quarterly data for the eight quarters ended December 31, 2001, expressed as a percentage of total sales for such quarters. We believe this information has been presented on the same basis as the audited consolidated financial statements appearing elsewhere in this prospectus, and all necessary adjustments have been included to present fairly the unaudited quarterly results when read in conjunction with our audited consolidated financial statements. The quarterly information was derived from our unaudited quarterly financial statements not included in this prospectus. Results of operations for any quarter are not necessarily indicative of the results to be expected for the entire fiscal year or for any future period.

	Quarter Ended							
	Mar. 31, 2000	June 30, 2000	Sept. 30, 2000	Dec. 31, 2000	Mar. 31, 2001	June 30, 2001	Sept. 30, 2001	Dec. 31, 2001
	(in thousands, except per share data)							
Net sales	\$133,344	\$163,899	\$205,749	\$172,044	\$227,494	\$230,899	\$287,900	\$214,092
Cost of sales	79,709	94,763	118,838	97,501	128,180	131,724	165,305	128,996
Gross profit	53,635	69,136	86,911	74,543	99,314	99,175	122,595	85,096
Royalty income (loss), net	5	104	6	201	217	(13)	64	(571)
	53,640	69,240	86,917	74,744	99,531	99,162	122,659	84,525
Operating expenses:								
Selling	14,671	16,441	25,177	21,162	20,842	24,191	40,771	25,597
General and administrative	26,094	31,130	33,865	34,738	47,389	45,554	59,929	53,117
	40,765	47,571	59,042	55,900	68,231	69,745	100,700	78,714
Earnings from operations	12,875	21,669	27,875	18,844	31,300	29,417	21,959	5,811
Interest expense	(1,799)	(2,192)	(2,674)	(2,565)	(3,758)	(3,417)	(4,194)	(2,483)
Other, net	—	277	(59)	100	491	660	381	(212)
	(1,799)	(1,915)	(2,733)	(2,465)	(3,267)	(2,757)	(3,813)	(2,695)
Earnings before income taxes	11,076	19,754	25,142	16,379	28,033	26,660	18,146	3,116
Income taxes	4,342	7,744	9,855	6,659	10,933	9,838	6,768	1,146
Net earnings	\$ 6,734	\$ 12,010	\$ 15,287	\$ 9,720	\$ 17,100	\$ 16,822	\$ 11,378	\$ 1,970
Basic net earnings per share	\$ .19	\$ .34	\$ .43	\$ .27	\$ .48	\$ .46	\$ .31	\$ .05
Diluted net earnings per share	\$ .19	\$ .33	\$ .40	\$ .26	\$ .45	\$ .44	\$ .30	\$ .05
Basic weighted average number of shares	34,905	34,940	35,837	35,428	35,871	36,330	36,704	36,739
Diluted weighted average number of shares	35,658	36,307	37,915	37,243	38,127	38,653	38,275	37,476

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	Quarter Ended							
	Mar. 31, 2000	June 30, 2000	Sept. 30, 2000	Dec. 31, 2000	Mar. 31, 2001	June 30, 2001	Sept. 30, 2001	Dec. 31, 2001
<b>As a Percentage of Net Sales:</b>								
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of sales	59.8	57.8	57.8	56.7	56.3	57.1	57.4	60.3
Gross profit	40.2	42.2	42.2	43.3	43.7	42.9	42.6	39.7
Royalty income (loss), net	0.0	0.1	0.0	0.1	0.1	0.0	0.0	(0.3)
	40.2	42.3	42.2	43.4	43.8	42.9	42.6	39.4
Operating expenses:								
Selling	11.0	10.0	12.2	12.3	9.2	10.5	14.2	12.0
General and administrative	19.6	19.0	16.5	20.2	20.8	19.7	20.8	24.8
	30.6	29.0	28.7	32.5	30.0	30.2	35.0	36.8
Earnings from operations	9.7	13.2	13.5	11.0	13.8	12.7	7.6	2.6
Interest expenses	(1.3)	(1.3)	(1.3)	(1.5)	(1.7)	(1.5)	(1.4)	(1.2)
Other, net	0.0	0.2	0.0	0.1	0.2	0.3	0.1	—
Earnings before income taxes	8.3	12.1	12.2	9.5	12.3	11.5	6.3	1.4
Income taxes	3.3	4.8	4.8	3.9	4.8	4.3	2.4	0.5
Net earnings	5.1%	7.3%	7.4%	5.6%	7.5%	7.3%	4.0%	0.9%

### **Inflation**

We do not believe that the relatively moderate rates of inflation experienced in the United States over the last three years have had a significant effect on our sales or profitability. However, we cannot accurately predict the effect of inflation on future operating results. Although higher rates of inflation have been experienced in a number of foreign countries in which our products are manufactured, we do not believe that inflation has had a material effect on our sales or profitability. While we have been able to offset our foreign product cost increases by increasing prices or changing suppliers in the past, we cannot assure you that we will be able to continue to make such increases or changes in the future.

### **Exchange Rates**

We receive U.S. dollars for substantially all of our product sales and our royalty income. Inventory purchases from offshore contract manufacturers are primarily denominated in U.S. dollars; however, purchase prices for our products may be impacted by fluctuations in the exchange rate between the U.S. dollar and the local currencies of the contract manufacturers, which may have the effect of increasing our cost of goods in the future. During 2001 and 2000, exchange rate fluctuations did not have a material impact on our inventory costs. We do not engage in hedging activities with respect to such exchange rate risk.

### **Market Risk**

We do not hold any derivative securities.

Market risk is the potential loss arising from the adverse changes in market rates and prices, such as interest rates and foreign currency exchange rates. Changes in interest rates and, in the future, changes in foreign currency exchange rates have and will have an impact on our results of operations.

*Interest rate fluctuations.* At December 31, 2001, approximately \$84.2 million of our outstanding borrowings was subject to changes in interest rates; however, we do not use derivatives to manage this risk. This exposure is linked to the prime rate of interest. We believe that moderate changes in the prime rate will not materially affect our operating results or financial condition. For example, a 1% change in interest rates

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would result in approximately \$842,000 annual impact on pretax income (loss) based upon those outstanding borrowing at December 31, 2001.

*Foreign exchange rate fluctuations.* We face market risk to the extent that changes in foreign currency exchange rates affect our non-U.S. dollar functional currency foreign subsidiary's assets and liabilities. In addition, changes in foreign exchange rates may affect the value of our inventory commitments. Also, inventory purchases of our products may be impacted by fluctuations in the exchange rates between the U.S. dollar and the local currencies of the contract manufacturers, which could have the effect of increasing cost of goods sold in the future. We manage these risks by primarily denominating these purchases and commitments in U.S. dollars. We do not engage in hedging activities with respect to such exchange rate risks.

### **Future Accounting Changes**

Effective January 1, 2001, we adopted Statement of Financial Accounting Standards No. 133 ("SFAS 133"), Accounting for Derivative Instruments and Hedging Activities. As a result, we recognize financial instruments, such as foreign currency forward contracts, at fair value regardless of the purpose or intent for holding the instrument. Changes in the fair value of derivative financial instruments are either recognized periodically through the statement of earnings or through stockholders' equity as a component of accumulated other comprehensive income or loss. The classification depends on whether the derivative financial instrument qualifies for hedge accounting, and if so, whether it qualifies as a fair value hedge or cash flow hedge. Generally, changes in fair values of derivatives designated as fair value hedges are matched in the statement of earnings against the respective gain or loss relating to the hedged items. Changes in fair values of derivatives accounted for as cash flow hedges, to the extent they are effective as hedges, are recorded in accumulated other comprehensive income net of deferred taxes. Changes in fair values of derivatives not qualifying as hedges are currently reported in earnings. The implementation of this standard did not have a significant impact on our financial statements.

During April 2001, the Emerging Issues Task Force ("EITF") issued EITF No. 00-14, Accounting for Certain Sales Incentives, and EITF No. 01-09, Accounting for Consideration Given by a Vendor to a Customer (including A Reseller of the Vendor's Products), which are effective for the first quarter beginning after December 15, 2001. These EITF's prescribe guidance regarding the timing of recognition and income statement classification of costs incurred for certain sales incentive programs to retailers and end consumers. We expect that the adoption of EITF No. 00-14 and EITF No. 01-09 will not have a material impact on our financial position or results of operations.

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 141 ("SFAS 141"), Business Combinations, and Statement of Financial Accounting Standards No. 142 ("SFAS 142"), Goodwill and Other Intangible Assets. SFAS 141 requires that the purchase method be used for all business combinations initiated after June 30, 2001. SFAS 142 requires that goodwill and intangible assets with indefinite useful lives no longer be amortized to earnings, but instead be reviewed for impairment in accordance with the provisions of SFAS 142. The amortization of goodwill and intangible assets with indefinite useful lives ceases upon adoption of SFAS 142 which is effective for fiscal years starting after December 15, 2001. We are in the process of quantifying the anticipated impact of adopting the provisions of SFAS 142, which is not expected to be material.

In October 2001, the FASB issued Statement of Financial Accounting Standards No. 144 ("SFAS 144"), Accounting for the Impairment or Disposal of Long-Lived Assets, which addresses financial accounting and reporting for the impairment or disposal of long-lived assets. While SFAS 144 supersedes Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of, it retains many of the fundamental provisions of that statement. The standard is effective for fiscal years beginning after December 15, 2001. We expect that the adoption of SFAS 144 will not have a material impact on our financial position or results from operations.

## BUSINESS

We design and market a collection of contemporary footwear for men, women and children under the Skechers brand, one of the most recognized names in the footwear industry. Our footwear reflects a combination of style, quality and value that appeals to a broad range of customers. Our shoes are sold through a wide range of department stores and leading specialty stores, a growing network of our own retail stores and our e-commerce website. Our objective is to continue to profitably grow our domestic operations, while leveraging our brand name to expand internationally.

We seek to offer consumers a collection of fashionable footwear that satisfies their casual, active and dress footwear needs. Our product line currently consists of over 1,500 active styles that are organized in seven distinct collections. Our core customer is a style-conscious consumer between the ages of 12 and 25 who is attracted to our youthful brand image and fashion forward designs. Over the last several years, we have introduced and expanded several footwear lines that have broadened our customer base. Our *Skechers Kids* line combines styling themes found elsewhere in our product line with colors and materials that reflect a playful image appropriate for children. We have also recently introduced or expanded several other lines such as *Skechers Collection* and *Skechers By Michelle K* that appeal to young adults interested in sophisticated fashions for the workplace and social occasions.

We believe that a well-recognized brand is an important element for success in the footwear business. We have aggressively promoted the Skechers brand through a comprehensive marketing campaign. This ongoing program has included endorsements from celebrities such as Britney Spears, Rick Fox, Robert Downey, Jr., Matt Dillon and Rob Lowe, print advertisements in publications such as *GQ*, *Vogue* and *Seventeen* and commercials aired on major networks and leading cable channels such as MTV, ESPN and Nickelodeon. We believe that this campaign, which is image oriented rather than product specific, has resulted in a high level of recognition of the Skechers brand across a variety of footwear categories.

### Our Strategy

Our strategy is to continue to distinguish ourselves from other participants in the footwear market and to provide controlled, well-managed growth. The following are the key elements of this strategy:

*Leverage the Skechers Brand.* The appeal of the Skechers brand is an integral part of our business and a source of sustainable competitive advantage. Consumers generally associate the Skechers brand name with footwear for an active, youthful lifestyle. Our in-house advertising and marketing team has developed a comprehensive program to promote the Skechers brand name through lifestyle and image advertising. We utilize an integrated campaign of celebrity endorsements, high impact print and television advertising, point-of-purchase marketing and high-profile trade show presentations to establish and maintain our image. While all advertisements feature our footwear, the marketing program is image driven, not product specific. We have made a conscious effort to avoid the association of the Skechers brand name with any single category of shoe to provide merchandise flexibility and to aid our ability to take the Skechers brand and product design in the direction of evolving footwear fashions and consumer preferences. We expect our marketing program to continue focusing on image rather than product to position us to adapt readily to changes in fashion and consumer preferences. We endeavor to spend approximately 8% to 10% of annual net sales in the marketing of our footwear and the promotion of the Skechers brand.

*Offer an Innovative, Compelling Footwear Collection.* Our footwear line covers a broad range of functional categories that include fashion sneakers and joggers, casual dress shoes, hiking and street boots and shoe-based skates. We have developed this collection, which we believe is one of the most comprehensive in the footwear industry, in an effort to improve our ability to respond to changing fashion trends and customer preferences. We do not believe that any single industry participant competes directly with us across our entire product offering. We introduce new footwear lines in accordance with our industry's spring and fall selling seasons, while we seek to stay current with evolving fashion trends by offering complementary styles every 30 to 60 days. The constant refreshment of our product portfolio ensures that our merchandise is current with the latest fashion trends and remains cutting-edge and innovative. Our footwear is generally priced to be highly competitive with other branded footwear collections. We provide our customers with quality and fashionable



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merchandise at compelling price points, primarily focusing our design efforts on comfort enhancing features rather than technical performance features.

*Maximize our Wholesale Network's Productivity.* Our footwear is currently carried by almost 3,500 leading department stores and specialty retailers in the United States. We expect to increase the number of stores that sell our footwear as our existing network of retailers open new locations and we identify other high productivity retailers that can support our collections within a given market. The breadth and depth of our product lines enable us to appeal to multiple distribution channels, which include department, specialty retail, athletic and other independent stores. We seek to partner with wholesale accounts we believe can best support the Skechers brand name in a given market and build a loyal customer base by providing a high level of knowledgeable, attentive and personalized customer service. We continuously work with our wholesale accounts to increase the amount and net profitability of our products that they sell. Our team of sales and merchandising professionals are committed to achieving customer satisfaction and help retailers determine the Skechers styles that they should carry and how our products should be displayed. This team also works with wholesale accounts to monitor inventory levels for specific stores in an effort to help retail sell-through. Such information is then used as a basis for developing sales projections and product needs for such customers.

*Open Additional Skechers Retail Stores.* We intend to selectively open new Skechers retail stores throughout the world. We operate our retail store strategy through our three integrated retail formats: the concept store, the factory outlet and the warehouse outlet store. Our concept stores complement our wholesale distribution accounts by building awareness of the Skechers brand and consumer interest in our footwear collection. Our store base also helps us to manage our inventory by providing early feedback on new styles and, through our outlet and warehouse stores, a brand sensitive venue to sell excess product. As of December 31, 2001, we owned and operated 78 retail stores in the United States, and we intend to open 10 to 15 new domestic stores in 2002. In 2001, we also opened our first foreign flagship retail stores in France, Germany, Japan and the United Kingdom, and may open additional foreign retail stores in 2002 on a selected basis.

*Expand our International Operations.* We are working to significantly increase our sales outside of the United States. We believe that we are well-positioned to increase our share of the international footwear market by leveraging the Skechers brand and diverse product lines throughout the world. We believe that Skechers' lifestyle image and contemporary footwear collections both have universal appeal. We have begun to increase our international advertising campaign to support this growth initiative and expect to increase the number of wholesale accounts and the number of Skechers retail stores where our product is sold. In 2001, we established wholly-owned subsidiaries in France, Germany and the United Kingdom to support our wholesale accounts and our owned and operated flagship retail stores. Our approach in most other foreign markets has been to work with third party distributors, such as in Japan where our partner recently opened our first flagship retail store in Asia. During 2001, we continued our international advertising campaign, which is designed to establish the Skechers brand name as a global brand synonymous with a casual, active, youthful lifestyle that stands for quality, comfort, durability and design innovation.

*Seek Opportunistic Licensing Deals.* We believe that licensing activities could, in time, be an important source of sustainable revenue for us. Our foremost objective in any licensing partnership will be to ensure the integrity of the Skechers brand. We are currently evaluating opportunities to license the Skechers brand name for non-footwear products such as accessories, backpacks and children's clothing with licensees who have a proven track record of brand sensitivity. We also intend to retain a high degree of control over the design, manufacturing specifications, advertising and distribution of licensed products, and we believe these licensees will be able to provide more effective manufacturing, distribution or marketing of non-footwear products than could be achieved in-house. We also own several brand names other than Skechers that we believe could provide attractive licensing opportunities.

## **Product Lines**

In December 1992, we introduced our first Skechers-branded line called *Skechers Sport Utility Footwear*. Since that time, we have expanded our product offerings and grown our net sales while substantially increasing the breadth and penetration of our account base. Each of our product lines benefits from the umbrella of the



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Skechers brand, which is recognized for contemporary and progressive styling, quality, comfort and affordability. To promote innovation and brand relevance, we manage our product lines separately by utilizing dedicated design and marketing teams. Our product lines share back office services in order to limit our operating expenses and fully utilize our management's vast experience in the footwear industry.

*Skechers USA*. The *Skechers USA* category for men and women includes six types of footwear: (i) *Casuals*, (ii) *Utility*, (iii) *Steel Toe*, (iv) *Classics*, (v) *Outdoor* and (vi) *Comfort* (for men only).

- The *Casuals* category includes "Black & Brown" boots and shoes that generally have a rugged, less refined design-some with industrial-inspired fashion features. This category is defined by the heavy-lugged outsole and value-oriented materials employed in the uppers. We design and price this category to appeal primarily to young persons with broad acceptance across age groups. Suggested retail price points range from \$45.00 to \$70.00 for this category.
- Our *Utility* styles consist of a single category of boots that are designed to meet the functional demands of a work boot but are marketed as casual footwear. The *Utility* outsoles are designed to be durable and wearable with Goodyear welted and hardened rubber outsoles. Uppers are constructed of thicker, better grades of heavily oiled leathers, and may include water-resistant or waterproof construction and/or materials, padded collars and Thermolite insulation. Styles include logger boots and demi-boots, engineer boots, motorcycle boots and six-and eight-eyelet work boots. Suggested retail price points range from \$80.00 to \$100.00 for this category.
- *Steel Toe*, an expanded category within *Skechers USA*, includes boots, shoes and athletic sneakers with steel toe construction. This category is designed for men and women whose jobs have certain safety requirements. Suggested retail price points range from \$45.00 to \$100.00 for this category.
- The *Classics* category of boots and shoes employ softer outsoles, which are often constructed of polyvinyl carbon ("PVC"). The more refined design of this footwear utilizes better grades of leather and linings. Designs are sportier than the *Casuals* category and feature oxfords, wingtips, monk straps, demi-boots and boots. Suggested retail price points range from \$55.00 to \$75.00 for this category.
- Our *Outdoor* styles primarily consist of hiker-influenced constructions that include boots and shoes. While this category includes many comfort and technical performance features, we market it primarily on the basis of style and comfort rather than on performance. However, many of the technical performance features in the *Outdoor* category contribute to the level of comfort this footwear provides. Outsoles generally consist of molded and contoured hardened rubber. Many designs may include gusseted tongues to prevent penetration of water and debris, cushioned mid-soles, motion control devices such as heel cups, water-resistant or water-proof construction and materials and heavier, more durable hardware such as metal D-rings instead of eyelets. Uppers are generally constructed of heavily oiled nubuck and full-grain leathers. Suggested retail price points range from \$55.00 to \$100.00 for this category.
- Launched in stores in Fall 2001, *Skechers Comfort* is the latest category of *Skechers USA*. With comfortable outsoles, more cushioned insoles and leather uppers, the line of stylish casuals is for trend-savvy men of all ages who want more edge in their black and brown footwear. *Skechers Comfort* is intended to be available in many of the same stores that carry *Skechers USA* as well as additional mid-tier and better department stores. Suggested retail price points range from \$55.00 to \$75.00 for this category.

*Skechers Sport*. Our *Skechers Sport* footwear for men and women includes (i) *Joggers*, *Trail runners*, *Sport hikers*, "*Terrainers*" (multi-functional shoes inspired by cross-trainers), (ii) *Court* and (iii) "*Street*" *active sneakers*. We distinguish our *Skechers Sport* category by its technical performance-inspired looks; however, generally we do not promote the technical performance features of these shoes.

- Our *Jogger*, *Trail runner*, *Sport hiker* and *Terrainer* designs are lightweight constructions that include cushioned heels, polyurethane midsoles, phylon and other synthetic outsoles, and white leather or synthetic uppers such as durabuck, cordura and nylon mesh. Careful attention is devoted to the design,

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pattern and construction of the outsoles, which vary greatly depending on the intended use. This category features earth tones and athletic-inspired hues with popular colors in addition to the traditional athletic white. The *Jogger*, *Trail runner*, *Sport hiker* and *Terrainer* styles are marketed through athletic footwear specialty retailers as well as basic existing accounts. Suggested retail price points range from \$40.00 to \$80.00 for this category.

- The *Court* category is inspired from classic court shoes and includes technical features, but is not meant to be a performance shoe. The court shoes feature lightweight constructions that include polyurethane and phylon midsoles, rubber low-profile outsoles, and some with heel airbag inserts for additional comfort and performance. The uppers are mostly mid-cut with some low tops, and constructed with better quality smooth, full-grain and tumbled leathers, typically in white. The court styles are marketed through athletic footwear specialty retailers as well as basic existing accounts. Suggested retail price points range from \$40.00 to \$70.00 for this category.
- *Street active sneakers* are everyday, everywhere casual shoes for females of all ages. Active sneakers are intended to be retailed through specialty casual shoe stores and department stores. Suggested retail price points range from \$40.00 to \$65.00 for this category.

*Skechers Collection*. The *Skechers Collection* line features stylish dress casual, dress and *EuroSport* shoes for the fashion-forward young male consumer. With some basic “essential” styles, this category is primarily comprised of more sophisticated designs influenced, in part, by prevailing trends in Italy and other European countries. As such, this footwear is more likely than other categories to be sourced from Italy and Portugal. The dress and dress casuals include classic tailored and fashion-forward square, rounder and pointed lasts in a variety of styles, such as bicycle toes, monk straps, wingtips, oxfords, cap toes, demi-boots and boots. The outsoles project a sleeker profile and can be either man-made or leather. The uppers are in high-quality leathers including glossy, “box,” and aniline. Inspired by the latest in European fashion, *EuroSport* blends classic dress casual styling with sport to create a versatile and comfortable casual shoe. First delivered in 2001, *EuroSport* is marked by details, high-quality leathers and suede in multiple colorations, and sport-inspired rubber outsoles. We have promoted *Skechers Collection* with advertising campaigns featuring Rick Fox, Robert Downey, Jr., Matt Dillon and Robe Lowe. Suggested retail price points range from \$65.00 to \$155.00 for this category.

*Skechers Kids*. The *Skechers Kids* line features a range of products including boots, shoes and sneakers. Comprised primarily of shoes that are designed like their adult counterparts but in “takedown” versions, the line offers the younger set the same popular styles as their older siblings and schoolmates. This “takedown” strategy maintains the product integrity with premium leathers, hardware and outsoles without the attendant costs involved in designing and developing new products. In addition, we adapt current fashion from our men’s and women’s lines by modifying designs and choosing colors and materials that are more suitable to the playful image we have established in the children’s footwear market. *Skechers Kids* includes variations on *Skechers Sport*, *Skechers USA* and *Skechers Collection* adult shoes. Unique to *Skechers Kids* is *S-Lights*, a line of lighted footwear combining sequencing patterns and lights in the outsole and other areas of the shoes. Our children’s footwear is offered at retail prices ranging from \$20.00 to \$50.00.

*Somethin’ Else from Skechers*. Launched in stores in Fall 2001, *Somethin’ Else from Skechers* is a junior line that features an array of stylish shoes, boots and sandals. We target to 12 to 25 year old style conscious females, and *Somethin’ Else from Skechers* is focused on current styling with numerous details and various silhouettes-including wedges and sculpted wedges. Many of the boots and shoes are made from more affordable materials such as man-made leather. *Somethin’ Else from Skechers* is designed to be a complementary line for juniors who already wear *Skechers USA* and *Skechers Sport* styles. Suggested retail price points range from \$20.00 to \$70.00 for this category.

*Skechers By Michelle K*. The *Skechers By Michelle K* line, also launched in stores in Fall 2001, is a designer line for trend-savvy young women between the ages of 18 and 34. A signature line from our head designer, Michelle Kelchak, the category is comprised of high fashion boots, shoes and sandals. Noticing a hole in the market for affordable high-fashion footwear, Michelle and her team of designers have created a line reflective of the latest European, Asian and American trends at a reasonable price and of the highest

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quality. Most styles are crafted in Italy, Portugal and Spain, with others made in Brazil. *Skechers By Michelle K* is marked by high-grade leathers, fine detailing and design and flattering silhouettes, including sculpted heels and lower kitten heels. Suggested retail price points range from \$60.00 to \$250.00 for this category.

*4 Wheelers by Skechers*. Launched in stores in Fall 2001, *4 Wheelers by Skechers* is a line of technical fashion roller skates for men, women and children. The skates incorporate our most popular sneaker uppers, including the *Energy* and *Energy II*, on quality aluminum and nylon chassis and polyurethane wheels. The uppers are in cool color combinations and feature fashion details such as glimmer trim for some women and girls' styles. Technical features include: full precision ABEC-1, 3 and 5 bearings, unique heel brake for easy control, durable chassis, controllable steering, and reinforced upper. Designed for the entire family, *4 Wheelers by Skechers* are street skates that can be worn indoors, and are ideal for fun and fitness. We have promoted *4 Wheelers by Skechers* with an advertising campaign featuring Britney Spears. Suggested retail price points for adults range from \$80.00 to \$100.00, and for children from \$60.00 to \$75.00.

In addition to the previously mentioned lines, we offer seasonal sandalized footwear, which features open-toe and open-side constructions consistent with our offerings in the *Skechers USA*, *Skechers Sport* and *Skechers Collection* categories of footwear. Such footwear includes fisherman's sandals, shower sandals, beach sandals, slides, comfort-oriented land sandals and technically inspired water sport sandals. Sandalized footwear includes both leather and synthetic constructions and may feature suede footbeds with form-fitting midsoles. We typically deliver our sandalized footwear to retailers from February to August. Suggested retail price points range from \$20.00 to \$60.00 for this category.

## **Product Design And Development**

Our principal goal in product design is to generate new and exciting footwear with contemporary and progressive styles and comfort enhancing performance features. All of our footwear is designed with an active, youthful lifestyle in mind. We design most new styles to be fashionable and marketable to the 12 to 25 year old consumer, while substantially all of our lines appeal to the broader range of 5 to 40 year old consumers. While many of our shoes have performance features, we generally do not position our shoes in the marketplace as technical performance shoes.

We believe that our product success is related in a large part to our ability to recognize trends in the footwear markets and to design products that anticipate and accommodate consumers' ever-evolving preferences. We strive to analyze, interpret and translate current and emerging lifestyle trends. Lifestyle trend information is compiled by our designers through various methods designed to monitor changes in culture and society, including (1) review and analysis of modern music, television, cinema, clothing, alternative sports and other trend-setting media, (2) travel to domestic and international fashion markets to identify and confirm current trends, (3) consultation with our retail customers for information on current retail selling trends, (4) participation in major footwear trade shows to stay abreast of popular brands, fashions and styles and (5) subscription to various fashion and color information services. In addition, a key component of our design philosophy is to continually reinterpret our successful styles in the Skechers image.

The footwear design process typically begins about nine months before the start of a season. Our products are designed and developed by our in-house staff. To promote innovation and brand relevance, we utilize dedicated design teams that focus on each of the men's, women's and children's categories, and report to our senior design executives. In addition, we utilize outside design firms on an item-specific basis to supplement our design efforts. The design process is extremely collaborative; members of the design staff meet weekly with the heads of retail and merchandising, sales, production and sourcing to further refine our products to meet the particular needs of our markets.

After a design team arrives at a consensus regarding the fashion themes for the coming season, the designers then translate these themes into our products. These interpretations include variations in product color, material structure and decoration, which are arrived at after close consultation with our production department. Prototype blueprints and specifications are created and forwarded to our prototype manufacturers located in Taiwan, which then forward design prototypes back to our domestic design team. New design

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concepts are often also reviewed by our major retail customers. Customer input not only allows us to measure consumer reaction to the latest designs, but also affords us an opportunity to foster deeper and more collaborative relationships with our customers. Our design teams can easily and quickly modify and refine a design based on customer input.

We occasionally order limited production runs which may initially be tested in our concept stores. By working closely with store personnel, we obtain customer feedback that often influences product design and development. We believe that sales in our concept stores can help forecast sales in national retail stores. We strive to determine within seven to 14 days after initial introduction of a product whether there is substantial demand for the style, thereby aiding us in our sourcing decisions. Styles that have substantial consumer appeal are highlighted in upcoming collections or offered as part of our periodic style offerings. The ability to initially test our products allows us to discontinue less popular styles after only a limited production run which affords us an indicator of future production and a hedge to fashion risks. Also, we strive to monitor five and 10 week trailing trends of orders of our retail account base in order to manage future production of styles that are increasing or decreasing in popularity. Generally, the production process takes approximately six months from design concept to commercialization.

### **Sourcing**

*Factories.* Our products are produced by independent contract manufacturers primarily located in China and, to a lesser extent, in Italy, the Philippines, Brazil and various other countries. We do not own or operate any manufacturing facilities. We believe the use of independent manufacturers increases our production flexibility and capacity while at the same time substantially reduces capital expenditures and avoids the costs of managing a large production work force.

We seek to use, whenever possible, manufacturers that have previously produced our footwear, which we believe enhances continuity and quality while controlling production costs. We attempt to monitor our selection of independent factories to ensure that no one manufacturer is responsible for a disproportionate amount of our merchandise. We source product for styles that account for a significant percentage of our net sales from at least four different manufacturers. During 2001, we had four manufacturers that accounted for approximately 51.9% of total purchases. No one manufacturer accounted for 20.0% or more of our total purchases for this period. To date, we have not experienced difficulty in obtaining manufacturing services.

We maintain an in-stock position for selected styles of footwear in order to minimize the time necessary to fill customer orders. In order to maintain an in-stock position, we place orders for selected footwear with our manufacturers prior to the time we receive customers' orders for such footwear. In order to reduce the risk of overstocking, we seek to assess demand for our products by soliciting input from our customers and monitoring retail sell-through. In addition, we analyze historical and current sales and market data to develop internal product quantity forecasts which helps reduce inventory risks.

We finance our production activities in part through the use of interest-bearing open purchase arrangements with certain of our Asian manufacturers. These facilities currently bear interest at a rate between 0.5% and 1.5% for 30 to 60 days financing, depending on the factory. We believe that the use of these arrangements affords us additional liquidity and flexibility. While we have long-standing relationships with many of our manufacturers and believe our relationships to be good, there are no long-term contracts between us and any of our manufacturers.

*Production Oversight.* To safeguard product quality and consistency, we oversee the key aspects of production from initial prototype manufacture through initial production runs to final manufacture. Monitoring is performed domestically by our in-house production department and in Asia through an approximately 130-person staff working from our offices in China and Taiwan. We believe that our Asian presence allows us to negotiate supplier and manufacturer arrangements more effectively, decrease product turnaround time, and ensure timely delivery of finished footwear. In addition, we require our manufacturers to certify that neither convict, forced, indentured labor (as defined under U.S. law) nor child labor (as defined by the manufacturer's country) is used in the production process, that compensation will be paid according to local law and that the factory is in compliance with local safety regulations.

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*Quality Control.* We believe that quality control is an important and effective means of maintaining the quality and reputation of our products. Our quality control program is designed to ensure that finished goods not only meet our established design specifications, but also that all goods bearing our trademarks meet our standards for quality. Quality control personnel perform an array of inspection procedures at various stages of the production process, including examination and testing of prototypes of key raw materials prior to manufacture, samples and materials at various stages of production and final products prior to shipment. Our employees are on-site at each of our major manufacturers to oversee key phases of production. In addition, unannounced visits to the manufacturing sites, to further monitor compliance with our manufacturing specifications, are made by our employees and agents.

### **Advertising And Marketing**

Our advertising and marketing focus is to maintain and enhance recognition of the Skechers brand name as a casual, active youthful brand that stands for quality, comfort and design innovation. Senior management is directly involved in shaping our image and the conception, development and implementation of our advertising and marketing activities. We have and continue to increase our advertising budget consistent with projected sales, which has included such avenues as magazines, television, trade shows, billboards, and buses. We endeavor to spend approximately 8% to 10% of annual net sales in the marketing of Skechers footwear through advertising, promotions, public relations, trade shows and other marketing efforts.

#### *Advertising*

Substantially all of our advertising is conceived and designed by our in-house staff. By retaining our advertising functions in-house, we believe that we are able to maintain a greater degree of control over both the creative process and the integrity of the Skechers brand image, while realizing substantial cost savings compared to using outside agencies.

We believe that our success to date is due in large part to our advertising strategies and methods. Our in-house advertising team has developed a comprehensive program to promote the Skechers brand name through lifestyle and image advertising. While all advertisements feature our footwear, our advertisements generally seek to build and increase brand awareness by linking the Skechers brand to youthful, contemporary lifestyles and attitudes rather than to market a particular footwear product. We have made a conscious effort to avoid the association of the Skechers name with any single category of shoe to provide merchandise flexibility and to aid the ability to take the brand and product design in the direction of evolving footwear fashions and consumer preferences.

We use a variety of media for our national advertising. Print efforts are represented by one and two page ads displayed in popular fashion and lifestyle consumer publications that appeal to our target customer group, such as *Spin*, *Details*, *Seventeen*, *GQ*, *Vibe*, *Rolling Stone*, *Vogue* and many others. Our progressive television advertisements are primarily produced in-house and air frequently on top television shows on major networks and the cable channels. Different advertisements are created for each of the 5 to 11, 12 to 24 and 25 to 35 year old male and female consumer groups. Our in-house media buyer strategically selects during which program and in which geographic area certain of our commercials will air in order to reach the appropriate target audience.

*Endorsements.* We believe that the high profile image and diverse appeal of each of our celebrity endorsements will help the Skechers brand reach new markets. In 2000, we signed our first celebrity endorsement agreements, including signing singer Britney Spears for an international (worldwide excluding the United States) print media campaign through June 2002. We expanded upon our successful relationship with Britney Spears in 2002 by signing a three-year worldwide licensing agreement for her to promote our collection of *Britney Spears 4 Wheelers*, which is fashioned after our *4 Wheelers by Skechers* line of technical fashion roller skates. We also recently signed professional basketball player and actor Rick Fox and actor Robert Downey, Jr. to separate limited term worldwide print media campaigns. We previously had similar relationships with actors Matt Dillon and Rob Lowe. From time to time, we may sign other celebrities to endorse our brand name and image and to strategically focus marketing of our products among specific consumer groups.

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*Marketing and Promotions.* By applying creative sales techniques to a broad spectrum of mediums, the marketing and promotions team develops Skechers brand name recognition, serving as a catalyst for increased product sales. Skechers promotional strategies have encompassed in-store specials, concert promotions, product tie-ins and giveaways, and collaborations with national retailers and radio stations. Our imaginative promotions draw customers to Skechers retail stores and to our retail partners' locations, which results in an expanded customer base and strong product sell-throughs.

*Public Relations.* During 2001, we received notable press coverage in print publications, including a *Forbes* cover story and being ranked ninth in *BusinessWeek's* Top 100 Growth Companies. In addition, we were noted in *Money*, *Vogue*, *Movieline*, *Entertainment Weekly*, *Elle* and *Sportswear International*, among others. We have repeatedly received recognition in the footwear industry for our exciting and innovative products, including Excellence in Children's Design Award by *Footwear Plus* magazine. Skechers was awarded the 2001 "Corporate Vendor of the Year" and "Children's Vendor of the Year" awards from Shoe Carnival. The Shoe Carnival awards recognize brands that have the largest sales increases and profit margin in the shoe chain's stores throughout the retail fiscal year.

With our strategy tied to promoting the newest styles produced by our design and development teams, our products are often featured in fashion and pop culture magazines, and in a select group of films and popular television shows. For example, our shoes have been prominently displayed and referenced on *The Today Show*, *Oprah*, *Good Morning America*, *Dharma & Greg* and *Malcolm in the Middle*.

### *Merchandising*

Our in-house display merchandising department supports retailers and distributors by developing point-of-purchase advertising to further promote our products in our wholesale customers' stores and to leverage recognition of the Skechers brand name at the retail level. Our field service representatives coordinate with our sales department to ensure better sell-through at the retail level. Our representatives communicate with and visit our wholesale customers on a regular basis to aid in the proper visual display of our merchandise and to distribute and display such point-of-purchase items as signage, packaging, displays, counter cards, banners and other visual merchandising displays. These materials mirror the look and feel of our national print advertising in order to reinforce brand image at the point-of-purchase. We believe these efforts help stimulate impulse sales and repeat purchases.

Our merchandise personnel also work closely with our wholesale customers to ensure the optimal exposure of our products through our shop-in-shops, which are exclusive selling areas within stores that offer our products and incorporate Skechers signage and customized fixture designs. The shop-in-shop concept enhances brand recognition and ensures the consistent presentation of our products in our wholesale customers' stores. As of December 31, 2001, our wholesale customers' stores included more than 300 shop-in-shops. We plan to add additional shop-in-shops during 2002.

*Trade Shows.* To best showcase our diverse products to footwear buyers across the nation, we exhibited at 23 trade shows during 2001. Our dynamic, state-of-the-art trade show exhibits, which are designed by our in-house architect and feature our latest product offerings, are specially planned and built to accommodate each trade show and are enhanced with lifestyle images that capture the image of our brand. By investing in innovative displays and individual rooms showcasing each line, our sales force can present a sales plan for each line and buyers are able to truly understand the breadth and depth of our offerings, optimizing commitments and sales at the retail level. Our innovative exhibits continually win awards, including Best Booth Design at the World Shoe Association, February 2001.

*Internet.* We also promote our brand image through our website at [www.skechers.com](http://www.skechers.com) to customers who directly access the Internet. This website currently enables us to present information on our products and store locations to consumers. The website is interactive, affording customers the ability to directly order products on the Internet and to allow us to receive and respond directly to customer feedback. Our website is intended to enhance the Skechers brand without the associated costs of advertising. Our website provides fashion information, provides a mechanism for customer feedback, promotes customer loyalty and further



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enhances the Skechers brand image through interactive content, photos, interviews and information on Skechers-sponsored events.

### **Domestic Sales And Distribution Channels**

Our products are sold in the United States through three primary distribution channels: to a network of wholesale accounts, in our own retail stores and, to a lesser extent, through electronic commerce on our interactive website. Each of these channels and the three distinct categories of our retail stores — concept stores, factory outlet stores and warehouse outlet stores — serves an integral function in the domestic distribution of our products.

#### *Wholesale Distribution*

As of December 31, 2001, we distributed our footwear to over 3,500 wholesale accounts in the United States. We believe that our broad product line enables us to appeal to a variety of wholesale accounts, many of whom may operate stores within the same mall or other retail locations, because retailers can select those styles of ours that best satisfy the fashion, function and price criteria of their clients. Management has implemented a strategy of controlling the growth of our wholesale distribution channels. Our strategy is to continue offering our accounts the highest level of customer service so that our products will be more fully represented in existing retail locations and new locations within each account.

We have approximately 100 sales representatives and 15 field service representatives to service our wholesale accounts. In an effort to provide knowledgeable and personalized service to our wholesale accounts, the sales force is segregated into men's, women's and children's divisions. The men's and women's divisions have a combined six regional sales managers and the children's division has three dedicated regional sales managers. Additionally, *Skechers By Michelle K*, *Skechers Collection*, and *4 Wheelers by Skechers* are each headed by its own national sales manager.

Each of these sales managers reports to our Executive Vice President, Domestic Sales, who has over 20 years of experience in the branded consumer products industry. Each of the sales staff is compensated on a salary plus commission basis with none of the representatives selling competitive products. Senior management is actively involved in selling to and maintaining relationships with Skechers' major retail accounts.

We believe that we have developed a loyal customer base of wholesale accounts through a heightened level of customer service. We believe that our close relationships with these accounts help us to maximize their retail sell-through, maintained margins and inventory turns which in turn minimizes our inventory markdowns and customer returns and allowances. Our field service representatives work with our wholesale accounts to ensure that our merchandise and point-of-purchase marketing materials are properly presented. Sales executives and merchandise personnel work closely with accounts to ensure the appropriate styles are purchased for specific accounts and for specific stores within those accounts as well as ensure that appropriate inventory levels are carried at each store. Such information is then utilized to help develop sales projections and determine the product needs of wholesale accounts. The value added services we provide our wholesale customers help us maintain strong relationships with our existing wholesale customers and attract potential new wholesale customers.

#### *Retail Stores*

We pursue our retail store strategy through our three integrated retail formats: the concept store, the factory outlet and the warehouse outlet store. Our three store format enables us to promote the full Skechers line in an attractive environment, appeal to a broad group of customers that are segmented by price points and manage inventory in an efficient and brand sensitive manner. In addition, most of our retail stores are profitable and have a positive effect on our operating results. As of December 31, 2001, we operated 29 concept stores, 29 factory outlet stores and 20 warehouse outlet stores in the United States. We plan to open between 10 to 15 retail stores during 2002.

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- *Concept Stores.* Our concept stores are located at either marquee street locations or in major shopping malls in large metropolitan cities. Our concept stores serve a threefold purpose in our operating strategy. First, concept stores serve as a showcase for a wide range of our product offerings for the current season, providing the customer with the entire product story. The concept stores feature modern music and lighting and present an open floor design to allow customers to readily view the merchandise on display. In contrast, we estimate that our average retail customer carries no more than 5.0% of the complete Skechers line. Second, retail locations are generally chosen to generate maximum marketing value for the Skechers brand name through signage, store front presentation and interior design. These locations include concept stores on 34th Street in New York City and in Santa Monica's Third Street Promenade. The stores are typically designed to create a distinctive Skechers look and feel and enhance customer association of the Skechers brand name with current youthful lifestyle trends and styles. Third, the concept stores serve as marketing and product testing venues that provide rapid product feedback from customers. We believe that product sell-through information derived from our concept stores enables our sales, merchandising and production staff to respond to market changes and new product introductions. Such responses serve to augment sales and limit our inventory markdowns and customer returns and allowances. We strive to adjust our product and sales strategy based upon seven to 14 days of retail sales information.

The prototypical Skechers concept store is approximately 2,500 square feet although in certain selected markets we have opened concept stores as large as 7,000 square feet or as small as 1,100 square feet. When deciding where to open concept stores, we identify top geographic markets in the larger metropolitan cities in the United States. When selecting a specific site, we evaluate the proposed sites' traffic pattern, co-tenancies, average sales per square foot achieved by neighboring concept stores, lease economics and other factors considered important within the specific location. If we are considering opening a concept store in a shopping mall, our strategy is to obtain space as centrally located as possible in the mall where we expect foot traffic to be most concentrated. We believe that the strength of the Skechers brand name has enabled us to negotiate more favorable terms with shopping malls that want us to open up concept stores to attract customer traffic to these malls. We opened two new concept stores during 2000 and five new concept stores during 2001.

- *Factory Outlet Stores.* Our factory outlet stores are generally located in manufacturers' outlet centers throughout the United States. Our factory outlet stores provide opportunities for us to sell discontinued and excess merchandise, thereby reducing the need to sell such merchandise to discounters at excessively low prices, which could otherwise compromise the Skechers brand image. Skechers factory outlet stores range in size from approximately 1,900 to 6,000 square feet. Inventory in these stores is supplemented by certain first-line styles sold at full retail price points generally of \$60.00 or lower. We opened five new factory outlet stores during 2000 and 11 new factory outlet stores during 2001.
- *Warehouse Outlet Stores.* Our free-standing warehouse outlet stores, which are located throughout the United States, enable us to liquidate excess merchandise, discontinued lines and odd-size inventory in a cost-efficient manner. Skechers warehouse outlet stores range in size from approximately 5,600 to 14,800 square feet. Our warehouse outlet stores enable us to sell discontinued and excess merchandise that would otherwise typically be sold to discounters at excessively low prices, thus compromising the Skechers brand image. We seek to open our warehouse outlet stores in areas that are in close proximity to our other retail stores in order to facilitate the timely transfer of inventory that we want to liquidate as soon as practicable. We opened three new warehouse outlet stores during 2000 and 10 new warehouse outlet stores during 2001.

*Electronic Commerce.* Our electronic commerce sales represented less than 1.0% of total net sales for each of 2000 and 2001. Our website, [www.skechers.com](http://www.skechers.com), is a virtual storefront that promotes the Skechers brand name. Designed as a customer center, our website showcases our products in an easy-to-navigate format, allowing customers to see and purchase our footwear. This virtual store has become a successful additional retail distribution channel, has improved customer service and is a fun and entertaining alternative-shopping environment.



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### **International Operations**

We market our products in countries and territories throughout the world. We generate revenues from outside the United States from three principal sources: (1) sales of our footwear directly to foreign distributors who distribute such footwear to department stores and specialty retail stores in Europe, Asia, Latin America, South America and numerous other countries and territories, (2) in France, Germany and the United Kingdom, we sell footwear directly to department stores and specialty retail stores and through retail stores that we own and operate and (3) to a lesser extent, royalties from licensees who manufacture and distribute our products outside the United States.

We believe that international distribution of our products represents a significant opportunity to increase revenues and profits. Although we are in the early stages of our international expansion, our products are currently sold in more than 100 countries and territories around the world. We intend to further increase our share of the international footwear market by heightening our marketing presence through our international advertising campaigns, which are designed establish Skechers as a global brand synonymous with casual shoes.

#### *Europe*

We have historically sold our footwear to selected wholesale customers in Europe through our foreign distributors. In 2001, we expanded our European operations and began to directly sell our footwear to certain wholesale accounts and retail stores in Europe in an effort to increase profit margins and more effectively market and promote the Skechers brand name. We organized Skechers U.S.A. Ltd. in the United Kingdom and Ireland and opened the subsidiary's headquarters in London to establish direct control over wholesale distribution, merchandising, and marketing of our products in these countries. We also organized Skechers U.S.A. SAS with its office in Paris, France and Skechers U.S.A. Deutschland GmbH with its office in Dietzenbach, Germany, with each of these subsidiaries formed to establish direct control over our products in their respective countries of organization. In 2001, we began to utilize a contract warehouse located in Belgium to distribute our footwear to our customers and retail stores in France, Germany and the United Kingdom.

Additionally, we are beginning to selectively open flagship retail stores internationally on our own or through joint ventures with local distributors. In the first three months of 2001, we opened our first European flagship retail stores on Oxford Street in London, at the Forum Les Halles in Paris and in the prestigious Centro Mall in Oberhausen, Germany. We intend to open additional wholly-owned flagship retail stores in the European Union (EU) countries and enter into agreements with distributors to operate flagship retail stores in non-EU countries.

#### *Asia*

In December 2001, we opened our first Asian flagship retail store in Kichijoji, Japan by agreement with Japanese distributor Achilles Corporation. Achilles Corporation is responsible for the store's operations and selecting a broad collection of our products to sell to Japanese consumers. In order to maintain a globally consistent image, we provided architectural, graphic and visual guidance and materials for the design of the store, and we trained the local staff on our products and corporate culture. We intend to expand our international presence and global recognition of the Skechers brand name in Asia by continuing to sell our footwear to foreign distributors and opening flagship retail stores with distributors that have local market expertise.

### **Licensing**

We believe that selective licensing of the Skechers brand name to non-footwear-related manufacturers may broaden and enhance the Skechers brand image without requiring significant capital investments or additional incremental operating expenses by us. Our diverse group of products presents many potential licensing opportunities on terms with licensees that we believe will provide more effective manufacturing, distribution or marketing of products such as accessories, backpacks and children's clothing than could be achieved in-house; however, we intend to be selective in granting any use of the Skechers brand name for such licensed products. We believe that the strength of the Skechers brand name and the size of our business will enable us to attract premier licensing partners with a proven track record of brand sensitivity. We are also interested in exploring the possibility of licensing our other trademarks and trade names for use with non-

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footwear products that could enable us to successfully enter and compete in non-footwear markets that we would not be likely to succeed in using the Skechers brand name and without having to compromise the Skechers brand image. In addition, we periodically review potential international licensing arrangements for footwear in various geographical regions that present favorable business opportunities. We intend to maintain substantial control over the design, manufacturing specifications, advertising and distribution of any licensed products and to maintain a policy of evaluating any future licensing arrangements to ensure consistent representation of the Skechers image.

### **Distribution**

We believe that strong distribution support is a critical factor in our operations. Once manufactured, our products are packaged in shoe boxes bearing bar codes and are shipped either (1) to our internally managed distribution center measuring approximately 1.4 million square feet and located in Ontario, California, (2) to a contract warehouse measuring approximately 130,000 square feet and located in Gent, Belgium for distribution to our European customers and retail stores or (3) directly from the manufacturer to our other international customers. Upon receipt at the central distribution center, merchandise is inspected and recorded in our management information system and packaged according to customers' orders for delivery. Merchandise is shipped to the customer by whatever means the customer requests, which is usually by common carrier. The central distribution center has multi-access docks, enabling us to receive and ship simultaneously and to pack separate trailers for shipments to different customers at the same time. We have an electronic data interchange system, or EDI system, to which some of our larger customers are linked. This system allows these customers to automatically place orders with us, thereby eliminating the time involved in transmitting and inputting orders, and includes direct billing and shipping information.

The following table sets forth a summary of the facilities that comprise our Ontario distribution center:

<u>Address</u>	<u>Status</u>	<u>Square Footage</u>
1661 South Vintage Avenue	Leased since November 1997	127,800
1777 South Vintage Avenue	Leased since November 1997	284,600
1670 Champagne Avenue	Owned since October 2000	263,700
4100 East Mission Blvd	Leased since June 2001	763,300
		<hr/>
		1,439,400(1)

(1) Excludes 285,600 square feet located at 5725 East Jurupa Street that we leased in April 1998 and occupied until we subleased the facility in June 2001.

We believe that we have the capacity at our Ontario distribution center to increase our current operations to meet projected demand, and if we should ever need to expand our distribution facilities to allow for further growth, we believe there is presently enough space available in close proximity that leads us to believe leasing or purchasing additional property will not be a problem in the foreseeable future.

### **Backlog**

We generally receive the bulk of our orders for each of the spring and fall seasons a minimum of three months prior to the date the products are shipped to customers. As of December 31, 2001, our backlog was \$222.2 million compared to \$221.6 million as of December 31, 2000. While backlog orders are subject to cancellation by customers, we have not experienced significant cancellation of orders in the past and we expect that substantially all the orders will be shipped in 2002. However, for a variety of reasons, including the timing of shipments, product mix of customer orders and the amount of in-season orders, backlog may not be a reliable measure of future sales for any succeeding period.

### **Intellectual Property Rights**

We own and utilize a variety of trademarks, including the Skechers® trademark. We have a significant number of both registrations and pending applications for our trademarks in the United States. In addition, we have trademark registrations and trademark applications in approximately 85 foreign countries. We also have

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design patents, and pending design and utility patent applications, in both the United States and various foreign countries. We continuously look to increase the number of our patents and trademarks, both domestically and internationally, where necessary to protect valuable intellectual property. We regard our trademarks and other intellectual property as valuable assets and believe that they have significant value in the marketing of our products. We vigorously protect our trademarks against infringement, including through the use of cease and desist letters, administrative proceedings and lawsuits.

We rely on trademark, patent, copyright, trade secret protection, non-disclosure agreements and licensing arrangements to establish, protect and enforce intellectual property rights in our logos, tradenames and in the design of our products. In particular, we believe that our future success will largely depend on our ability to maintain and protect the Skechers trademark. Despite our efforts to safeguard and maintain our intellectual property rights, we cannot assure you that we will be successful in this regard. Furthermore, we cannot assure you that our trademarks, products and promotional materials or other intellectual property rights do not or will not violate the intellectual property rights of others, that our intellectual property would be upheld if challenged, or that we would, in such an event, not be prevented from using our trademarks or other intellectual property rights. Such claims, if proven, could materially and adversely affect our business, financial condition and results of operations. In addition, although any such claims may ultimately prove to be without merit, the necessary management attention to and legal costs associated with litigation or other resolution of future claims concerning trademarks and other intellectual property rights could materially and adversely affect our business, financial condition and results of operations. We have sued and have been sued by third parties for infringement of intellectual property. It is our opinion that none of these claims have materially impaired our ability to utilize our intellectual property rights.

The laws of certain foreign countries do not protect intellectual property rights to the same extent or in the same manner as do the laws of the United States. Although we continue to implement protective measures and intend to defend our intellectual property rights vigorously, these efforts may not be successful or the costs associated with protecting our rights in certain jurisdictions may be prohibitive. From time to time, we discover products in the marketplace that are counterfeit reproductions of our products or that otherwise infringe upon intellectual property rights held by us. Actions taken by us to establish and protect our trademarks and other intellectual property rights may not be adequate to prevent imitation of our products by others or to prevent others from seeking to block sales of our products as violating trademarks and intellectual property rights. If we are unsuccessful in challenging a third party's products on the basis of infringement of our intellectual property rights, continued sales of such products by that or any other third party could adversely impact the Skechers brand, result in the shift of consumer preferences away from us and generally have a material adverse effect on our business, financial condition and results of operations.

## **Competition**

Competition in the footwear industry is intense. Although we believe that we do not compete directly with any single company with respect to its entire range of products, our products compete with other branded products within their product category as well as with private label products sold by retailers, including some of our customers. Our utility footwear and casual shoes compete with footwear offered by companies such as The Timberland Company, Dr. Martens, Kenneth Cole Productions, Steven Madden, Ltd. and Wolverine World Wide, Inc. Our athletic shoes compete with brands of athletic footwear offered by companies such as Nike, Inc., Reebok International Ltd., Adidas-Salomon AG and New Balance. Our children's shoes compete with brands of children's footwear offered by The Stride Rite Corporation. In varying degrees, depending on the product category involved, we compete on the basis of style, price, quality, comfort and brand name prestige and recognition, among other considerations. These and other competitors pose challenges to our market share in our major domestic markets and may make it more difficult to establish our products in Europe, Asia and other international regions. We also compete with numerous manufacturers, importers and distributors of footwear for the limited shelf space available for the display of such products to the consumer. Moreover, the general availability of contract manufacturing capacity allows ease of access by new market entrants. Many of our competitors are larger, have achieved greater recognition for their brand names, have captured greater market share and/or have substantially greater financial, distribution, marketing and other resources than us. We cannot assure you that we will be able to compete successfully against present or future

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competitors or that competitive pressures faced by us will not have a material adverse effect on our business, financial condition and results of operations.

### **Employees**

As of February 28, 2002, we employed 1,964 persons, 1,111 of which were employed on a full-time basis and 853 of which were employed on a part-time basis. None of our employees are subject to a collective bargaining agreement. We believe that our relations with our employees are satisfactory. We offer our employees a discount on Skechers merchandise to encourage enthusiasm for the product and Skechers loyalty.

### **Properties**

Our corporate headquarters and additional administrative offices are located at five premises in Manhattan Beach, California, and consist of an aggregate of approximately 110,000 square feet. We own and lease portions of our corporate headquarters and administrative offices. The leased property expires between August 2002 and February 2008, with options to extend in some cases, the current aggregate annual rent for the leased property is approximately \$1.2 million.

Our distribution center consists of four facilities located in Ontario, California. The three leased facilities aggregate approximately 1,176,000 square feet, with an annual base rental of approximately \$5.2 million. The leased property expires between August 2002 and May 2011, and contains rent escalation provisions. The owned distribution facility is approximately 264,000 square feet.

All of our retail stores and showrooms are leased with terms expiring between January 2003 and August 2012. The leases provide for rent escalations tied to either increases in the lessor's operating expenses or fluctuations in the consumer price index in the relevant geographical area, and in some cases a percentage of the store's gross sales in excess of the base annual rent. Total rent expenses related to our retail stores and showrooms was \$9.3 million for the year ended December 31, 2001.

In February 2001, we completed the purchase of three adjacent properties located in Manhattan Beach, California for a total of \$4.5 million. We financed the purchase of the properties through internally generated funds and currently available short-term borrowings. We intend to build additional administrative offices on these properties.

We also lease all of our administrative offices, retail stores and showrooms located in France, Germany, Switzerland, and the United Kingdom. The terms of our leased property expire at various dates between July 2002 and March 2016. Total rent for this leased property aggregated approximately \$1.4 million during 2001.

### **Legal Proceedings**

On December 29, 1999, a complaint captioned SHAPIRO, ET AL., V. SKECHERS U.S.A., INC., ET AL. was filed against Skechers and two of our officers and directors in the United States District Court, Central District of California, Case No. 99-13559. The complaint is a purported class action claiming damages for alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. The complaint also names as defendants the underwriters for Skechers' June 9, 1999 initial public offering of our Class A common stock. On January 12, 2000, a complaint captioned Abraham, et al., v. Skechers U.S.A., Inc., et al. was filed against Skechers and two of our officers and directors in the United States District Court, Central District of California, Court Case No. 00-00471. The complaint is a purported class action claiming damages for alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. On January 24, 2000, a complaint captioned Astrolio, et al., v. Skechers U.S.A., Inc., et al. was filed against Skechers and two of our officers and directors in the United States District Court, Central District of California, Case No. 00-00772. The complaint is a purported class action claiming damages for alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. The complaint also names the underwriters for Skechers' initial public offering of our Class A common stock as defendants in the case. On January 19, 2000, a complaint captioned Pugliesi, et al., v. Skechers U.S.A., Inc., et al. was filed against Skechers and two of our officers and directors in the United States District Court, Central District of California, Case No. 00-00631. The complaint is a purported class action claiming damages for alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

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All four securities actions were subsequently consolidated into one matter and a consolidated complaint was filed on June 1, 2000. The consolidated complaint named as defendants Skechers, two officers of Skechers, and the underwriters of Skechers' initial public offering of our Class A common stock on June 9, 1999. The class alleged in the consolidated complaint, consists of all persons who purchased securities in, or traceable to, Skechers' initial public offering of our Class A common stock on June 9, 1999 or thereafter on the open market prior to June 15, 1999.

In response to the consolidated complaint, Skechers filed a motion to dismiss the entire case. On September 25, 2000, a tentative order was issued to dismiss the consolidated complaint in its entirety, with leave to amend, and on June 20, 2001, an order was issued dismissing the case in its entirety with leave to amend. The class filed an amended complaint on or about August 3, 2001, and on September 26, 2001, Skechers filed a motion to dismiss the amended complaint in its entirety. In response to the motion, and after discussions between class counsel and counsel for defendants, the class agreed to dismiss with prejudice the entire consolidated class action as to Skechers, our two named officers and defendants and the underwriters. The class agreed to dismiss with prejudice without any settlement from defendants. Thus, the stipulation had no material impact on operations or financial results. A stipulation of dismissal with prejudice was executed by the parties in late December 2001. The court signed the stipulation without modification and entered the order of dismissal on January 30, 2002.

On September 29, 2000, a complaint captioned MADISON TRADING LIMITED CORPORATION AND MERCURY INTERNATIONAL TRADING CORPORATION V. SKECHERS USA, INC., LOVITT FILMS, INC. AND BERT LOVITT was filed against Skechers in the United States District Court in Massachusetts, Civil Case No. CV-12016JLT. The lawsuit alleges quantum meruit, intentional interference with contract, intentional interference with advantageous relationship, unfair practices and declaratory relief arising out of a business arrangement between Skechers and inventor Bert Lovitt. The complaint seeks an injunction preventing Skechers from using certain technology, compensatory damages, exemplary damages and treble damages. The court denied the plaintiffs' motion for a preliminary injunction. In February 2002, all parties agreed to settlement in principle and as of this filing are reducing the settlement agreement to writing. The terms of the settlement are confidential. Notwithstanding, the terms will not have a material impact on the financial position or results of operations of Skechers.

On March 6, 2002, Skechers filed a complaint captioned SKECHERS U.S.A., INC. V. HEELING SPORTS LIMITED, HEELING MANAGEMENT CORPORATION, ROGER ADAMS AND CHARLIE BEERY. The complaint was filed in the United States District Court Central District of California (Case No. 02-1906NM). Skechers' complaint alleges federal, California and common law unfair competition, intentional interference with economic relations and intentional interference with contract with respect to Skechers' shoes called "3 Wheelers." Skechers seeks relief that includes enjoining defendants from certain actions, certain trebled money damages, punitive damages, restitution and attorney fees and costs. On April 10, 2002, Skechers was served with a complaint captioned HEELING SPORTS LIMITED AND HEELING MANAGEMENT CORP., V. SKECHERS U.S.A., INC. that was filed on April 10, 2002 in the United States District Court, Eastern District of Texas, Sherman Division (Civil Action No. 4:02cv101). The lawsuit alleges breach of confidential agreement and misappropriation of trade secrets and is with respect to Skechers' 3 Wheelers. The complaint seeks relief that includes permanent injunction enjoining Skechers from selling the 3 Wheeler skates, using any alleged confidential information and assignment of any intellectual property based on the plaintiff's alleged confidential information, and damages that include those sustained by the plaintiff as a result of Skechers' actions, profits and exemplary and punitive damages. Skechers' 3 Wheelers is a new product that is currently a very small part of our product line. Skechers believes that it has meritorious defenses to the claims made by Heeling Sports Limited and Heeling Management Corp. and intends to defend these claims vigorously. Skechers has not yet filed a responsive pleading nor answer to the complaint. Litigation is uncertain, and Skechers may not prevail in the lawsuit and expresses no opinion as to its ultimate outcome.

We occasionally become involved in litigation arising from the normal course of business. Other than the foregoing, we believe that any liability with respect to pending legal actions, individually or in the aggregate, will not have a material adverse effect on our business, financial condition and results of operations.

MANAGEMENT

**Directors, Executive Officers and Key Employees**

The following table sets forth the name, age as of April 3, 2002, and position with us of our directors, executive officers and certain key employees:

Name	Age	Position
<i>Directors and Executive Officers:</i>		
Robert Greenberg	62	Chairman of the Board and Chief Executive Officer
Michael Greenberg	39	President and Director
David Weinberg	51	Executive Vice President, Chief Financial Officer and Director
Jeffrey Greenberg	34	Vice President, Active Electronic Media and Director
Philip Paccione	40	Executive Vice President, Business Affairs, General Counsel and Secretary
Mark Nason	40	Executive Vice President, Merchandising
Joe Phillips	50	Executive Vice President, Domestic Sales
Richard Siskind <sup>(1)(2)</sup>	55	Director
Geyer Kosinski <sup>(1)(2)</sup>	35	Director
Thomas Poletti <sup>(1)(2)</sup>	44	Director
<i>Key Employees:</i>		
Marvin Bernstein	54	Vice President, International Sales
Mark Bravo	39	Vice President, Finance
Martin Brown	40	Vice President, Corporate Imaging
Larry Clark	45	Vice President, Production and Sourcing
Lynda Cumming	42	Vice President, Allocation and Production
Paul Galliher	52	Vice President, Distribution Center
Kathy Garber	42	Vice President, Product Development
Jason Greenberg	32	Vice President, Visual Imaging
Joshua Greenberg	29	Vice President, Design Production
Scott Greenberg	41	Vice President, Visual Merchandising
Geric Johnson	50	Vice President, Direct Marketing
Michelle Kelchak	38	Vice President, Design
Russell Lucas, Jr.	54	President, International Division
Peter Mow	38	Vice President, Real Estate
Gary Patrick	46	Vice President, Media
Gary Siegel	46	Vice President, Retail Operations
John Quinn	51	Chief Strategy Officer
Faith Paige Wall	34	Vice President, Licensing
George Zelinsky	53	President, Retail

(1) Member of Compensation Committee

(2) Member of Audit Committee

*Robert Greenberg* has served as our Chairman of the Board and Chief Executive Officer since October 1993. From 1979 to 1992, Mr. Greenberg co-founded and served as the Chairman of the Board and President of L.A. Gear, an athletic footwear and apparel company. Mr. Greenberg is a member of the Board of Directors



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of Stage II Apparel Corp. (AMEX:SA), which changed its name to JKC Group, Inc. (AMEX:JKC) in April 2002.

*Michael Greenberg* has served as our President and as a member of our Board of Directors since our inception in 1992. From 1989 to 1992, he served as the National Sales Manager of L.A. Gear, Inc. From 1986 to 1989, Mr. Greenberg served as the Regional Sales Manager of L.A. Gear for the west coast, and from 1984 to 1986, he served as an account representative for the west coast at L.A. Gear.

*David Weinberg* has served as our Executive Vice President and Chief Financial Officer since 1993 and as a member of our Board of Directors since 1998. From June 1989 to September 1992, Mr. Weinberg served as Vice President, Credit and Collections for L.A. Gear.

*Jeffrey Greenberg* has served as a member of our Board of Directors since September 2000 and as Vice President, Active Electronic Media since January 1998. From our inception in 1992 to July 1998, Mr. Greenberg served as our Chief Operating Officer and Secretary and as a member of our Board of Directors, and from our inception in 1992 to October 1993, he served as our Chief Financial Officer.

*Philip Paccione* has served as our Executive Vice President, Business Affairs since February 2000, as our Corporate Secretary since July 1998 and as our General Counsel since May 1998. From June 1997 to May 1998, Mr. Paccione was an attorney at Riordan & McKinzie, located in Los Angeles, and from May 1996 to June 1997 he was a sole practitioner. Mr. Paccione also practiced law at Gartner & Young from December 1994 to May 1996 and at Kelly, Drye & Warren from June 1991 to December 1994.

*Mark Nason* has served as our Executive Vice President, Merchandising since March 2002. From January 1998 to March 2002, Mr. Nason served as our Vice President, Retail and Merchandising, and from December 1993 to January 1998, he served as our Director of Merchandising and Retail Development. From January 1981 through November 1993, Mr. Nason was employed in various capacities, including General Merchandising Manager, Director of Visual Merchandising and Buyer at Track 'n Trail (OTC:TKTL).

*Joe Phillips* has served as our Executive Vice President, Domestic Sales since March 2002, and from January 2001 to March 2002, he served as our Vice President, Sales. From 2000 to 2001, Mr. Phillips served as President and Chief Executive Officer at Jeremy's Microbatch Ice Creams, where he was brought in to restructure and stabilize the company, and from 1999 to 2000, he served as a general management consultant for Life Is Good. From 1994 to 1998, Mr. Phillips served as Senior Vice President of Sales and General Manager at Champion Products, Inc.

*Richard Siskind* has served as a member of our Board of Directors since June 1999. Since May 1998, Mr. Siskind has served as President, Chief Executive Officer and a member of the Board of Directors of Stage II Apparel Corp. (AMEX:SA), which changed its name to JKC Group, Inc. (AMEX:JKC) in April 2002. In 1992, Mr. Siskind founded R. Siskind & Company, a business which purchases brand name men's and women's apparel and accessories and re-distributes those items to off-price retailers, and he is its sole shareholder, President, Chief Executive Officer and sole member of its Board of Directors.

*Geyer Kosinski* has served as a member of our Board of Directors since November 2001. Since 1997, Mr. Kosinski has been a managing partner and co-owner of Industry Entertainment, a talent management and production company that produces feature films and television shows and manages over 100 leading actors, writers, directors and musicians. From 1992 to 1997, Mr. Kosinski was an agent at The William Morris Agency, representing talent including George Clooney, Robert Downey, Jr., Kevin Spacey, Angelina Jolie and Billy Bob Thornton and packaging such movies as Slingblade and Albino Alligator.

*Thomas Poletti* has served as a member of our Board of Directors since January 2002. Mr. Poletti is a partner at the law firm of Kirkpatrick & Lockhart LLP and has practiced law at Kirkpatrick & Lockhart LLP and its Los Angeles-based predecessor, Freshman, Marantz, Orlanski, Cooper & Klein since 1984 where he has served as a partner for the last 14 years.

*Marvin Bernstein* has served as our Vice President, International Sales since June 1998, and from December 1996 to June 1998, he served as our Vice President, International Sales and Licensing. From June

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1993 to December 1996, Mr. Bernstein served as our Director of Special Projects, and from 1985 to 1992, he served as Vice President of Special Projects and Key Accounts at L.A. Gear.

*Mark Bravo* has served as our Vice President, Finance since January 1999. From October 1992 to January 1999, Mr. Bravo served as our Director of Finance.

*Martin Brown* has served as our Vice President, Corporate Imaging since June 1998, and from March 1993 to June 1998, Mr. Brown served as our Director of Special Projects.

*Larry Clark* has served as our Vice President, Production and Sourcing since March 1995, and from August 1993 to March 1995, he served as our as Vice President of Product Development/ Production, International Division. From 1992 to 1993, Mr. Clark was Vice President Operations at ALAD Inc., an apparel company, and from 1985 from 1992 he was Vice President of Research and Development at L.A. Gear. Prior to that, Mr. Clark was at Footlocker-Kinney Shoe Corp. for 10 years.

*Lynda Cumming* has served as our Vice President, Allocation and Production since October 1992, and from 1988 to 1992, Ms. Cumming served as Vice President, Allocation at L.A. Gear.

*Paul Galliher* has served as our Vice President, Distribution Center since May 1994, and from 1989 to 1994, Mr. Galliher served as the Director of Distribution at L.A. Gear.

*Kathy Garber* has served as our Vice President, Product Development since June 1998, and from June 1996 to September 1998, she served as our Directors of Product Development. From September 1993 to June 1996, Ms. Garber served as Product Development Manager, and from May 1993 to September 1993, she served as our Children's Product Manager.

*Jason Greenberg* has served as our Vice President, Visual Imaging since January 1998, and from June 1992 to July 1998, he served as a member of our Board of Directors. From June 1996 to January 1998, Mr. Greenberg served as our Advertising Director, and from June 1994 to June 1996, he held a position with us in product development.

*Joshua Greenberg* has served as our Vice President, Design Production since September 2000, and from September 1993 to September 2000, Mr. Greenberg held various positions with us in design production.

*Scott Greenberg* has served as our Vice President, Visual Merchandising since January 1997, and from June 1994 to January 1997, Mr. Greenberg was in charge of our international marketing.

*Geric Johnson* has served as our Vice President, Direct Marketing since January 1998. From January 1990 until January 1998, Mr. Johnson served in various capacities with Frederick's of Hollywood, Inc., a retailer of women's apparel. While at Frederick's of Hollywood he held the positions of President, Executive Vice President, General Manager and Vice President of Operations, and his responsibilities included running the day to day operations of the Mail Order Division.

*Michelle Kelchak* has served as our Vice President, Design since June 1998. Ms. Kelchak joined us in July 1992 as Head Designer, and from January 1995 through May 1998 served as our Design Director. Prior to joining us, Ms. Kelchak was a designer of men's, women's and children's footwear at LA Gear.

*Russell Lucas, Jr.* has served as our President, International Division since January 2001. From 1997 to 2000, Mr. Lucas served as Managing Director, Europe at New Balance Athletic Shoe, Inc. in charge of its European operations, and from 1992 to 1995, he served as Director, International at Columbia Sportswear Company (NASDAQ:COLM). From 1988 to 1992, Mr. Lucas served as President, Patagonia International at Patagonia Inc., and from 1983 to 1987, he was employed at Nike Inc. (NYSE:NKE) as an attorney in its legal department and then as its Director of International Business Development.

*Peter Mow* has served as our Vice President, Real Estate since September 2000. From 1997 to 2000, Mr. Mow served as Vice President of Real Estate, New Store Development and Construction for Bugle Boy Industries. From 1995 to 1997, Mr. Mow served as Director of Construction and Store Planning at Bugle Boy Industries.



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*Gary Patrick* has served as our Vice President, Media, since June 2000. Mr. Patrick joined us in October 1995 as a media consultant and has helped direct our advertising strategies and overseen media planning and buying functions. From 1992 to 1995, Mr. Patrick was a founding partner and executive vice president of Media Inc., a media buying service.

*John Quinn* has served as our Chief Strategy Officer since October 2001, and from June 1999 to October 2001, as a member of our Board of Directors. From January 1995 to July 31, 2001, Mr. Quinn was a principal of the law firm of Riordan & McKenzie, a professional corporation, and from 1987 to January 1995, he was a partner at the law firm of Kelley Drye & Warren.

*Gary Siegel* has served as our Vice President, Retail Operations since October 1999. From 1995 to 1999, Mr. Siegel served as Senior Vice President at Chernin's Shoes, Inc. in charge of sales and merchandising for its retail chain. From 1994 to 1995, Mr. Siegel was General Merchandise Manager at Chernin's Shoes, Inc., and from 1985 to 1994, he was Senior Buyer of its Women's Shoe Division.

*Faith Paige Wall* has served as our Vice President, Licensing since December 2001. From August 1997 to December 2001, Ms. Wall served as Vice President of Licensing and Retail at 4Kids Entertainment Company, where her responsibilities included licensing Pokemon worldwide, and from August 1995 to August 1997, she served as Director of Licensing for Equity Management.

*George Zelinsky* has served as our President, Retail since September 2001. From 1989 to September 2001, Mr. Zelinsky served as Vice President, General Merchandise Manager of Famous Footwear, and from 1967 to 1989, he served as Vice President, General Merchandise Manager of Wohl Shoes.

### **Board of Directors and Board Committees**

Our Board of Directors currently has seven members. The Board of Directors is divided into three classes. Class I Directors serve until the annual meeting of stockholders in 2003 and thereafter for the terms of three years until their successors have been elected and qualified. Class II Directors serve until the annual meeting of stockholders in 2004 and thereafter for terms of three years until their successors have been elected and qualified. Class III Directors serve until the annual meeting of our stockholders in 2002 and thereafter for terms of three years until their successors have been elected and qualified. Robert Greenberg and Thomas Poletti are Class I Directors; Michael Greenberg, Jeffrey Greenberg and David Weinberg are Class II Directors; Richard Siskind and Geyer Kosinski are Class III Directors.

The term of office of one class of directors expires each year and at each annual meeting the successors of the class whose term is expiring in that year are elected to hold office for a term of three years and until their successors are elected and have qualified. We pay non-employee directors annual compensation of \$15,000 for their services. In addition, non-employee directors receive a fee of \$1,000 for each meeting attended. Non-employee directors attending any committee meeting receive an additional fee of \$750 for each committee meeting attended, unless the committee meeting is held on the day of a meeting of the Board of Directors, in which case they will receive no additional compensation for the committee meeting. Non-employee directors are also reimbursed for reasonable costs and expenses incurred for attending any director and committee meetings. Our officers who are directors will not be paid any directors fees. Employee directors are eligible to receive option grants and direct stock issuances under our 1998 Employee Stock Option Plan and our 1998 Stock Option, Deferred Stock and Restricted Stock Plan, respectively. Non-employee directors will receive, from time to time, grants of options to purchase a number of shares of our Class A common stock determined by our board of directors. During 2001, David Weinberg was granted options to purchase 110,000 shares at a weighted average exercise price of \$16.48 per share and Geyer Kosinski was granted options to purchase 30,000 shares at a weighted average exercise price of \$10.48 per share. In January 2002, Thomas Poletti was granted options to purchase 30,000 shares at a weighted average exercise price of \$14.62 per share. Robert Greenberg is the father of Michael Greenberg and Jeffrey Greenberg; other than the foregoing, no family relationships exist between any of our executive officers or directors.

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Our Board of Directors has an Audit Committee and a Compensation Committee. The Audit Committee is comprised of Richard Siskind, Geyer Kosinski and Thomas Poletti and is responsible for making recommendations concerning the engagement of independent certified public accountants, approving professional services provided by the independent certified public accountants and reviewing the adequacy of our internal accounting controls. The Compensation Committee is comprised of Richard Siskind, Geyer Kosinski and Thomas Poletti and is responsible for recommending to our Board of Directors all officer salaries, management incentive programs and bonus payments.

### **Compensation Committee Interlocks and Insider Participation**

Until April 16, 2002, Robert Greenberg served on the board of directors and the compensation committee of Stage II Apparel Corp., whose President and Chief Executive Officer is Richard Siskind. Other than as described above, none of our executive officers serves on the board of directors or on the compensation committee of any other entity that has officers who serve on our Board of Directors or Compensation Committee.

### **Limitations on Directors' Liabilities and Indemnification**

Our Certificate of Incorporation provides that, except to the extent prohibited by the Delaware General Corporation Law (the "DGCL"), our directors shall not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as our directors. Section 102(b)(7) of the DGCL permits a corporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL relating to unlawful dividends, stock purchases or redemptions or (iv) for any transaction from which the director derived an improper personal benefit. Section 102(b)(7) of the DGCL is designed, among other things, to encourage qualified individuals to serve as directors of Delaware corporations. We believe this provision will assist us in securing the services of qualified directors who are not our employees. This provision has no effect on the availability of equitable remedies, such as injunction or rescission. If equitable remedies are found not to be available to stockholders in any particular case, stockholders may not have any effective remedy against actions taken by our directors that constitute negligence or gross negligence. This provision also does not affect the director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws. In addition, we intend to maintain liability insurance for our officers and directors.

Section 145 of the DGCL permits us to, and our Certificate of Incorporation provides that we may, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was, or has agreed to become, a director or officer of ours, or is or was serving, or has agreed to serve, at our request, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom. Such right of indemnification shall inure to such individuals whether or not the claim asserted is based on matters that antedate the adoption of our Certificate of Incorporation. Such right of indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs and personal representatives of such a person. The indemnification provided by our Certificate of Incorporation shall not be deemed exclusive of any other rights that may be provided now or in the future under any provision currently in effect or hereafter adopted by our Certificate of Incorporation, by any agreement, by vote of stockholders, by resolution of directors, by provision of law or otherwise. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors pursuant to the foregoing provision, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

## CERTAIN TRANSACTIONS

Shares of our Class A common stock issuable upon conversion of shares of our Class B common stock held by the Greenberg Family Trust and Michael Greenberg, our President, are subject to certain registration rights. We entered into a registration rights agreement with the Greenberg Family Trust and Michael Greenberg pursuant to which we agreed that we will, on up to two separate occasions per year, register up to one-third of the shares of our Class A common stock issuable upon conversion of their shares of our Class B common stock beneficially owned by each such stockholder as of the closing of our initial public offering of Class A common stock on June 14, 1999 in any one year, provided, among other conditions, that the underwriters of any such offering have the right to limit the number of shares included in such registration. We also agreed that, if we shall cause to be filed with the Securities and Exchange Commission a registration statement, each such stockholder shall have the right to include up to one-third of the shares of our Class A common stock issuable upon conversion of their shares of our Class B common stock beneficially owned by each of them as of the closing of our initial public offering of Class A common stock on June 14, 1999 in such registration statement provided, among other conditions, that the underwriters of any such offering have the right to limit the number of shares included in such registration. All expenses of such registrations shall be at our expense.

John Quinn, our Chief Strategy Officer and formerly a member of our Board of Directors, was a principal of the law firm Riordan & McKenzie until October 2001. We paid \$33,000 to Riordan & McKenzie for legal services that were provided to us during 2001.

Thomas Poletti, a member of our Board of Directors, is a partner at the law firm of Kirkpatrick & Lockhart LLP. We paid \$252,000 to Kirkpatrick & Lockhart LLP for legal services that were provided to us during 2001.

We have entered into employment agreements with certain executive officers. See “Executive Compensation — Employment Agreements.”

We believe that all of the foregoing transactions were on terms no less favorable than those that could have been received from unrelated third parties.

## DESCRIPTION OF THE NOTES

The 4.50% Convertible Subordinated Notes due April 15, 2007 were issued under, and are governed by, an indenture (the “Indenture”) between us and Wells Fargo Bank, National Association, as trustee. The Indenture and the notes are governed by New York law. Because this section is a summary, it does not describe every aspect of the notes and the Indenture. This summary is subject to, and qualified in its entirety by, reference to all the provisions of the Indenture, including definitions of certain terms used in the Indenture. Wherever we refer to particular defined terms, those terms are incorporated herein by reference. In this section, references to “Skechers,” “we,” “our” or “us” refer solely to Skechers and not to any of our subsidiaries.

### General

The notes are our general, unsecured obligations. The notes are subordinated in right of payment, which means that they rank in right of payment behind certain of our other indebtedness as described below. Except as set forth below, the notes are limited to \$90,000,000 aggregate principal amount. We are required to repay the full principal amount of the notes on April 15, 2007, unless they are required to be redeemed or repurchased on an earlier date by their terms.

The notes bear interest at the annual rate shown on the front cover of this prospectus from the date of issuance of the notes. We will pay interest twice a year, on each April 15 and October 15 (each, an Interest Payment Date), beginning October 15, 2002, until the principal is paid or made available for payment or the notes have been converted. We will pay interest to the persons in whose name the note is registered at the close of business on the immediately preceding April 1 or October 1, as the case may be (each, a Regular Record Date). Interest payable per \$1,000 principal amount of notes for the period from April 9, 2002 to October 15, 2002, will be \$23.25. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

You may convert the notes into shares of our Class A common stock at any time before the close of business on April 15, 2007, unless the notes have been previously redeemed or repurchased. The initial conversion rate is stated on the front cover of this prospectus. The conversion rate may be adjusted as described below. Holders of notes called for redemption or submitted for repurchase are entitled to convert the notes up to and including the business day immediately preceding the date fixed for redemption or repurchase.

We may redeem some or all of the notes at any time before April 15, 2005 and prior to maturity at a redemption price of \$1,000 per \$1,000 principal amount of notes, plus accrued and unpaid interest, if any, to the redemption date, if (1) the closing price of our Class A common stock on The New York Stock Exchange has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day immediately before the date of mailing of the provisional redemption notice and (2) the registration statement of which this registration statement forms a part is effective and available for use for the 30 days following the provisional redemption date, unless registration is no longer required. We will make an additional payment in cash with respect to the notes called for provisional redemption in an amount equal to \$135.00 per \$1,000 principal amount of notes, less the amount of any interest actually paid on the notes before the date of redemption. We may redeem the notes at our option at any time on or after April 15, 2005, in whole or in part, at the redemption prices set forth below under “— Optional Redemption by Skechers,” plus accrued and unpaid interest to, but excluding, the redemption date. If there is a Change in Control, as defined below, holders of the notes may have the right to require us to repurchase their notes as described below under “— Repurchase at Option of Holders Upon a Change in Control.”

No “sinking fund” is provided for the notes, which means that the Indenture does not require us to redeem or retire the notes periodically.

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### **Further Issuances**

We may from time to time, without notice to you or your consent, create and issue up to \$35,000,000 aggregate principal amount of further notes ranking equally and ratably with the notes in all respects (or in all respects except for the payment of interest accruing prior to the issue date of such further notes or except for the first payment of interest following the issue date of such further notes), so that such further notes shall be consolidated and form a single series with the notes and shall have the same terms as to status, redemption or otherwise as the notes.

### **Form, Denomination, Transfer, Exchange and Book-Entry Procedures**

The notes are issued:

- only in fully registered form,
- without interest coupons, and
- in denominations of \$1,000 and integral multiples thereof.

Principal of, premium, if any, and interest on the notes will be payable, and the notes may be presented for registration or exchange, at the office or agency we maintain for such purpose in the Borough of Manhattan, City of New York. Until we designate otherwise, our office or agency will be the trustee's corporate trust office presently located in the Borough of Manhattan, City of New York.

The notes are currently evidenced by one or more global notes that have been deposited with the trustee as custodian for DTC and registered in the name of Cede & Co. (Cede), as nominee of DTC. The global note and any notes issued in exchange for the global note are subject to restrictions on transfer and will bear the legend regarding those restrictions substantially as set forth in "Notice to Investors." Except as set forth below, record ownership of the global note may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

No global note will be registered in the name of any person, or exchanged for notes that are registered in the name of any person, other than DTC or its nominee, unless either of the following occurs:

- DTC has notified us that it is unwilling or unable to continue as depository for the global note or has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so, or
- an Event of Default (as defined below) with respect to the notes represented by the global note has occurred and is continuing.

In those circumstances, DTC will determine in whose names any notes issued in exchange for the global note will be registered.

So long as the notes are registered in the name of Cede as nominee for DTC, DTC or its nominee will be considered the sole owner and holder of the global note for all purposes, and as a result:

- you cannot receive notes registered in your name if they are represented by the global notes
- you cannot receive certificated (physical) notes in exchange for your beneficial interest in the global notes
- you will not be considered to be the owner or holder of the global note or any note it represents for any purpose, and
- all payments on the global note will be made to DTC or its nominee.

The laws of some jurisdictions require that certain kinds of purchasers can only own securities in physical, certificated form. These laws may limit your ability to acquire an interest in the notes and to transfer or encumber your beneficial interests, in the global note to these types of purchasers.

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Only institutions, such as a securities broker or dealer, that have accounts with DTC or its nominee, called participants, and persons that may hold beneficial interests through participants can own a beneficial interest in the global note. The only place where the ownership of beneficial interests in the global note appear and the only way the transfer of those interests can be made on the records kept by DTC (for its participants' interests) and the records kept by those participants (for interests participants hold on behalf of other persons).

Secondary trading in bonds and notes of corporate issuers is generally settled in clearinghouse (that is, next day) funds. In contrast, beneficial interests in a global note usually trade in DTC's same day funds settlement system, and settle in immediately available funds. Neither we nor the Initial Purchaser makes any representation as to the effect that settlement in immediately available funds will have on trading activity in those beneficial interests.

We will make cash payments of interest on, and the redemption or repurchase price of, the global note, as well as any payment of Liquidated Damages, only to Cede, the nominee for DTC, as the registered owner of the global notes. We will make these payments by wire transfer of immediately available funds on each payment date.

We have been informed that, with respect to any cash payment of interest on, principal of, or the redemption or repurchase price of, the global note, as well as any payment of Liquidated Damages, DTC's practice is to credit participants' accounts on the payment date with payments in amounts proportionate to their respective beneficial interests in the notes represented by the global note as shown on DTC's records, unless DTC has reason to believe that it will not receive payment on that payment date. Payments by participants to owners of beneficial interests in notes represented by the global notes held through participants are the responsibility of those participants, as is now the case with securities held for the accounts of customers registered in "street name."

We will send any redemption notices to the trustee. If fewer than all of the notes are to be redeemed, the particular ratio to be redeemed will be selected by the trustee by a method that the trustee deems to be fair and appropriate. We understand that if fewer than all of the global notes are to be redeemed, DTC's current practice is to determine by lot the amount of the holdings of each participant in the global notes to be redeemed.

We also understand that neither DTC nor Cede will consent or vote with respect to the notes. We have been advised that under its usual procedures, DTC will mail an "omnibus proxy" to us as soon as possible after the record date. The omnibus proxy assigns Cede's consenting or voting rights to those participants to whose accounts the notes are credited on the record date identified in a listing attached to the omnibus proxy.

Because DTC can only act on behalf of participants, who in turn act on behalf of indirect participants, the ability of a person having a beneficial interest in the principal amount represented by the global note to pledge or otherwise encumber their interest in the note to persons or entities that do not participate in the DTC book entry system, or otherwise take actions in respect of that interest, may be adversely affected by the lack of a physical certificate evidencing its interest.

DTC has advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange) only at the direction of one or more participants to whose account with DTC interests in the global note are credited and only in respect of such portion of the principal amount of the notes represented by the global note as to which such participant has, or participants have, given such direction.

DTC has also advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code, as amended, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations. Certain of such participants

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(or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

DTC's policies and procedures, which may change periodically, will apply to payments, transfers, exchanges and other matters relating to beneficial interests in the global note. The trustee and we have no responsibility or liability for any aspect of DTC's or any participant's records relating to beneficial interests in the global note, including for payments made on the global note, and we and the trustee are not responsible for maintaining, supervising or reviewing any of those records.

### **Conversion Rights**

You may, at your option, convert the principal amount of any note that is an integral multiple of \$1,000 into shares of our Class A common stock at any time prior to the close of business on the maturity date, unless the note has been previously redeemed or repurchased. If the notes are called for redemption or are subject to repurchase, you may convert your notes at any time before the close of business on the business day immediately preceding the date fixed for redemption or repurchase, as the case may be, unless we default in making the payment due upon redemption or repurchase. In each case, the initial conversion rate is equal to 38.5089 shares per \$1,000 principal amount of notes, which is equivalent to an initial conversion price of approximately \$25.9680 per share. The conversion rate is subject to adjustment as described below.

The holder of a note can convert the note by delivering the note to the trustee's corporate trust office, accompanied by a duly signed and completed notice of conversion, a copy of which may be obtained from the trustee. In the case of a global note, we have been informed that DTC will effect the conversion upon notice from the holder of a beneficial interest in the global note in accordance with DTC's rules and procedures. The conversion date will be the date on which the note and the duly signed and completed notice of conversion are so delivered to the trustee. As promptly as practicable on or after the conversion date, we will issue and deliver to the trustee a certificate or certificates for the number of full Class A common stock issuable upon conversion, together with payment in lieu of any fractional shares, and the trustee shall deliver the certificate(s) to the conversion agent for delivery to the holder of the note being converted. The Class A common stock issuable upon conversion of the notes will be fully paid and nonassessable.

If you surrender a note for conversion on a date that is not an Interest Payment Date, you will not be entitled to receive any interest for the period from the preceding Interest Payment Date to the date of conversion, except as described below. However, if you are a holder of a note on a Regular Record Date, including a note that is subsequently surrendered for conversion after the Regular Record Date, you will receive the interest payable on such note on the next Interest Payment Date. To correct for this resulting overpayment of interest, we will require that any note surrendered for conversion during the period from the close of business on a Regular Record Date to the opening of business on the next Interest Payment Date be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of notes being surrendered for conversion. However, you will not be required to make that payment if you are converting a note, or a portion of a note, that we have called for redemption, or that you are entitled to require us to repurchase from you, if your conversion right would terminate because of the redemption or repurchase between the Regular Record Date and the close of business on the next Interest Payment Date.

If we distribute rights or warrants (other than those referred to in clause (2) below) pro rata to holders of Class A common stock, so long as any such rights or warrants have not expired or been redeemed by us, the holder of any note surrendered for conversion will be entitled to receive upon such conversion, in addition to the shares of Class A common stock issuable upon such conversion (the Conversion Shares), a number of rights or warrants to be determined as follows:

- if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants, the Distribution Date, the same number of rights or warrants to which a holder of a number of shares of Class A common stock equal to the



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number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of, and applicable to, the rights or warrants, and

- if such conversion occurs after such Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Class A common stock into which such note was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date in accordance with the terms and provisions of, and applicable to, the rights or warrants.

No other payment or adjustment for interest, or for any dividends on our Class A common stock, will be made upon conversion. If you receive Class A common stock upon conversion of a note, you will not be entitled to receive any dividends payable to holders of Class A common stock as of any record date before the close of business on the conversion date. We will not issue fractional shares upon conversion of notes. Instead, we will pay an amount in cash based on the closing sales price of our Class A common stock on The New York Stock Exchange on the conversion date.

If you deliver a note for conversion, you will not be required to pay any taxes or duties in respect of the issuance or delivery of Class A common stock on conversion. However, you will be required to pay any tax or duty that may be payable in respect of any transfer involved in the issuance or delivery of our Class A common stock in a name other than yours. We will not issue or deliver certificates representing Class A common stock unless the person requesting the issuance or delivery has paid to us the amount of any such tax or duty or has established to our satisfaction that no such tax or duty is payable.

The conversion rate is subject to adjustment if, among other things:

(1) there is a dividend or other distribution payable in Class A common stock on any class of our capital stock,

(2) we issue to all holders of Class A common stock rights, options or warrants entitling them to subscribe for or purchase Class A common stock at less than the then current market price, calculated as described in the Indenture, of our Class A common stock; however, if those rights, options or warrants are only exercisable upon the occurrence of specified triggering events, then the conversion rate will not be adjusted until the triggering events occur,

(3) we subdivide, reclassify or combine our Class A common stock,

(4) we distribute to all holders of our Class A common stock evidences of our indebtedness, shares of capital stock, cash or assets, including securities, but excluding:

- those dividends, rights, options, warrants and distributions referred to in paragraphs (1) and (2) above
- dividends and distributions paid in cash (except as set forth in paragraphs (5) and (6) below), and
- distributions upon a merger or consolidation as discussed below,

(5) we make a distribution consisting exclusively of cash (excluding portions of distributions referred to in clause (4) above and cash distributed upon a merger or consolidation as discussed below) to all holders of our Class A common stock if the aggregate amount of the distribution combined together with (A) other such all cash distributions made within the preceding 365-day period in respect of which no adjustment has been made and (B) any cash and the fair market value of other consideration payable in respect of any tender offer by us or any of our subsidiaries for our Class A common stock concluded within the preceding 365-day period in respect of which no adjustment has been made, exceeds 10% of our market capitalization, being the product of the current market price per share of our Class A common stock on the record date for such distribution and the number of shares of Class A common stock then outstanding, or

(6) a tender offer is successfully completed by us or any of our subsidiaries for our Class A common stock that involves aggregate consideration that, together with (A) any cash and the fair market value of other consideration payable in a tender offer by us or any of our subsidiaries for our Class A common



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stock concluded within the 365-day period preceding the completion of such tender offer in respect of which no adjustment has been made and (B) the aggregate amount of any such all cash distributions referred to in paragraph (5) above to all holders of Class A common stock within the 365-day period preceding the expiration of such tender offer in respect of which no adjustments have been made, exceeds 10% of our market capitalization on the expiration of such tender offer.

If we implement a rights plan, we are required under the Indenture to provide that the holder of notes will receive the rights upon conversion of the notes, whether or not these rights were separated from the Class A common stock prior to conversion, subject to certain limited exceptions.

We reserve the right to make such increases in the conversion rate in addition to those required by the provisions described above as we may consider to be advisable so that any event treated for United States federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. We will not be required to make any adjustment to the conversion rate until the cumulative required adjustments amount to 1.0% or more of the conversion rate. We will compute any adjustments to the conversion rate and give notice to the holders of any such adjustments.

If we merge with or into or consolidate with another person or sell or transfer all or substantially all of our assets, each note then outstanding will, without the consent of the holder of any note, become convertible only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Class A common stock into which the note was convertible immediately prior to the merger, consolidation, sale or transfer. This calculation will be made based on the assumption that the holder of Class A common stock failed to exercise any rights of election that the holder may have had to select a particular type of consideration. The adjustment will not be made for a merger that does not result in any reclassification, conversion, exchange or cancellation of our Class A common stock.

We may, from time to time, increase the conversion rate by any amount for any period of at least 20 days if our board of directors has determined that such increase would be in our best interests. Any such determination will be conclusive. We will give holders of notes at least 15 days' notice of this increase in the conversion rate. No such increase will be taken into account for purposes of determining whether the closing price of the Class A common stock exceeds the conversion price by 105% in connection with an event which otherwise would be a Change in Control as discussed below.

If at any time we make a distribution of property to our stockholders that would be taxable to them as a dividend for United States federal income tax purposes (for example, distributions of evidences of indebtedness or assets by us, but generally not stock dividends on Class A common stock or rights to subscribe for Class A common stock) and, pursuant to the anti-dilution provisions of the Indenture, the number of shares into which notes are convertible is increased, that increase may be deemed for United States federal income tax purposes to be the payment of a taxable dividend to holders of notes. For more details, see "Certain Federal Income Tax Considerations."

### **Subordination**

The payment of the principal of, premium, if any, and interest on the notes, including any Liquidated Damages, and any amounts payable upon the redemption or repurchase of the notes, is subordinated in right of payment to the extent set forth in the Indenture to the prior payment in full of all of our Senior Debt. The notes are also effectively subordinated to any debt or other liabilities of our subsidiaries. On December 31, 2001, we had \$282.0 million of outstanding Senior Debt.

"Senior Debt" means the principal of, and premium, if any, and interest, including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding, on, and rent payable on or in connection with and all fees, costs, claims, expenses and other amounts payable in connection with, the following, whether

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absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of the Indenture or thereafter created, incurred or assumed:

- all our indebtedness evidenced by a credit or loan agreement, note, bond, debenture or other similar instrument whether or not the recourse of the lender is to all of our assets or to only a portion
- all of our indebtedness, obligations and other liabilities, contingent or otherwise, for borrowed money, including, without limitation, overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements and any loans or advances from banks, whether or not evidenced by notes or similar instruments, or bonds, debentures, notes or similar instruments, whether or not the recourse of the lender is to all of our assets or to only a portion thereof
- all our obligations as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles
- all our obligations under leases for facilities, equipment or other assets entered into for financing purposes, whether or not capitalized
- all our obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property or improvements, or any personal property included as part of any such lease, which provides that we are contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a residual value of leased property to the lessor and all of our obligations under such lease or related document to purchase or to cause a third party to purchase the leased property, whether or not such lease transaction is characterized as an operating lease or capitalized lease in accordance with generally accepted accounting principles
- all our obligations under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts or similar agreements or arrangements
- all our obligations with respect to letters of credit, bank guarantees, bankers' acceptances and similar facilities, including related reimbursement obligations
- all our obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business
- all our obligations of the type referred to above of another person and all dividends of another person, the payment of which, in either case, we have assumed or guaranteed, or for which we are responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise, or which are secured by a lien on our property, and
- renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for any indebtedness or obligation described in the bullets above.

Senior Debt does not include:

- the notes
- any liability for federal, state, local or other taxes owed or owing by us
- any indebtedness or obligation if the terms of the indebtedness or obligation, or the terms of the instrument under which the indebtedness or obligation is issued, expressly provide that the indebtedness or obligation is not superior in right of payment to the notes
- accounts payable or other accrued liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services, or
- any indebtedness or obligation that we may owe to any of our direct or indirect subsidiaries.

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We will not make any payment on account of the notes if any of the following occurs:

- we default in our obligations to pay principal, premium, interest or other amounts on or in connection with our Senior Debt, including a default under any redemption or repurchase obligation (a “Payment Default”), and the default continues beyond any grace period that we may have to make those payments, or
- a default (other than a Payment Default) occurs and is continuing on any Designated Senior Debt that permits the holders of the Designated Senior Debt to accelerate its maturity and the trustee has received a payment blockage notice from us, the holder of such debt or such other person permitted to give such notice under the Indenture.

If payments of the notes have been blocked by a Payment Default, payments on the notes will resume (including missed payments, if any) when the Payment Default has been cured or waived. If payments on the notes have been blocked by a default other than a Payment Default, payments on the notes will resume (including missed payments, if any) on the earlier of (1) the date on which such default is cured or waived and (2) 179 days after the date on which the trustee receives the payment blockage notice if the maturity of the Designated Senior Debt has not been accelerated such that such debt is then presently payable, unless the Indenture otherwise prohibits payment at that time.

No default (other than a Payment Default) that existed on the day a payment blockage notice was delivered to the trustee can be used as the basis for any subsequent payment blockage notice unless that existing non-payment default has been cured for a period of at least 90 days. In addition, once a holder of Designated Senior Debt has blocked payment on the notes by giving a payment blockage notice, no new period of payment blockage can be commenced until both of the following are satisfied:

- 365 days have elapsed since the effectiveness of the immediately prior payment blockage notice, and
- all scheduled payments of principal, any premium and interest (and Liquidated Damages, if any) on the notes that have come due have been paid full in cash.

“Designated Senior Debt” means (i) any indebtedness outstanding under our existing credit facility and (ii) our obligations under any particular Senior Debt in which the instrument creating or evidencing the debt, or the assumption or guarantee of the debt, or related agreements or documents to which we are a party, expressly provides that the indebtedness will be Designated Senior Debt for purposes of the Indenture. That instrument, agreement or other document may place limitations and conditions on the right of that Senior Debt to exercise the rights of Designated Senior Debt.

In addition, upon any acceleration of the principal due on the notes as a result of an Event of Default or payment or distribution of our assets to creditors upon any dissolution, winding up, liquidation or reorganization, whether voluntary or involuntary, marshaling of assets, assignment for the benefit of creditors, or in bankruptcy, insolvency, receivership or other similar proceedings, all principal, premium, interest and other amounts due on or in connection with all Senior Debt must be paid in full in cash or cash equivalents before you will be entitled to receive any payment with respect to the notes (except that holders of notes may receive and retain payments or distributions in the form of junior securities). Due to the subordination provisions of the notes and the Indenture, in the event of insolvency, our creditors who are holders of Senior Debt may recover more, ratably, than you would, and this subordination may reduce or eliminate payments to you.

The term “junior securities” means (i) equity interests in us or (ii) our securities that are subordinated to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the notes are subordinated to Senior Debt under the Indenture.

The notes are effectively subordinated to all indebtedness and other liabilities of our subsidiaries, including trade payables and lease obligations. This occurs because any right we have to receive any assets of our subsidiaries upon their liquidation or reorganization, and the consequent right of the holders of the notes to participate in those assets, are effectively subordinated to the claims of that subsidiary’s creditors, including trade creditors, and preferred stockholders, except to the extent that we are recognized as a creditor of the subsidiary, in which case our claims would still be subordinate to any security interest in the subsidiary’s assets

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and any indebtedness of the subsidiary senior to that which we hold, at least to the extent of the collateral for such indebtedness.

The Indenture does not limit our ability to incur indebtedness, including Senior Debt, or the ability of any of our subsidiaries to incur indebtedness.

### **Optional Redemption by Skechers**

On or after April 15, 2005, we may redeem the notes, in whole or in part, at our option, at the redemption prices specified below. The redemption price, expressed as a percentage of principal amount, is as follows for the 12-month periods beginning on April 15 of the following years (April 15, 2005 through April 14, 2006 in the case of the first of such periods):

Year	Redemption Price
2005	101.80%
2006	100.90%

and thereafter is equal to 100% of the principal amount.

In each case, we will also pay accrued interest to, but excluding, the redemption date. The Indenture requires us to give notice of redemption not more than 60 days and not less than 30 days before the redemption date.

If we do not redeem all of the notes, the trustee will select the notes to be redeemed in principal amounts of \$1,000 or whole multiples of \$1,000 by lot, on a pro rata basis or in accordance with any other method the trustee considers fair and appropriate. If any notes are to be redeemed in part only, a new note or notes in principal amount equal to the unredeemed principal portion thereof will be issued. If a portion of a holder's notes is selected for partial redemption and the holder converts a portion of its notes, the converted portion will be deemed to be taken from the portion selected for redemption.

### **Provisional Redemption by Skechers**

We may redeem the notes, in whole or in part, at any time before April 15, 2005, at a redemption price equal to \$1,000 per \$1,000 principal amount of the notes to be redeemed plus accrued and unpaid interest, if any, to, but excluding, the date of redemption if (1) the closing price of our Class A common stock on the New York Stock Exchange has exceeded 150% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day immediately before the date of mailing of the redemption notice and (2) the shelf registration statement of which this prospectus forms a part covering resales of the notes and the Class A common stock issuable upon conversion of the notes is effective and available for use and is expected to remain effective and available for use for the 30 days following the provisional redemption date, unless registration is no longer required. Upon any provisional redemption, we will make an additional payment in cash or, at our option, Class A common stock, or in a combination of cash and Class A common stock, with respect to the notes called for redemption in an amount equal to \$135.00 per \$1,000 principal amount of the notes, less the amount of any interest actually paid on the note before the date of redemption. For purposes of any such payment in Class A common stock, the value of such Class A common stock will be at 95% of the average of the closing sales prices of the Class A common stock on the New York Stock Exchange for each of the five trading days ending with the third trading day immediately prior to the redemption date. We are obligated to make this additional payment on all notes called for redemption, including any notes converted after the notice date and before the redemption date. Because the number of shares of Class A common stock to be delivered to holders of notes in payment of the additional redemption payment (should we elect such payment option) is determined on the basis of the market price of our Class A common stock after we have given notice of the occurrence of the optional redemption and prior to the redemption date, the value of the Class A common stock on the date of delivery thereof to such holders may be more or less than the additional redemption price had we elected to pay such price in cash.

## Repurchase at Option of Holders Upon a Change in Control

If a Change in Control occurs, you have the right, at your option, to require us to repurchase all of your notes not called for redemption, or any portion of the principal amount of your notes that is equal to \$1,000 or any greater integral multiple of \$1,000. The price we are required to pay is 100% of the principal amount of the notes to be repurchased, together with interest accrued to the repurchase date.

At our option, instead of paying the repurchase price in cash, we, or the successor entity in the Change in Control transaction, may pay the repurchase price in Class A common stock, or in a combination of cash and Class A common stock, such Class A common stock to be valued at 95% of the average of the high and low sales prices of the Class A common stock on the New York Stock Exchange for each of the five consecutive trading days ending with the third trading day prior to the repurchase date. We may only pay the repurchase price in Class A common stock if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. Because the number of shares of Class A common stock to be delivered to holders of notes in payment of the repurchase price (should we elect such payment option) is determined on the basis of the market price of our Class A common stock after we have given notice of the occurrence of the Change in Control and prior to the repurchase date, the value of the Class A common stock on the date of delivery thereof to such holders may be more or less than the repurchase price had we elected to pay such price in cash.

Within 30 days after the occurrence of a Change in Control, we will mail you notice of the Change in Control and of your repurchase right arising as a result of the Change in Control. We will also deliver a copy of this notice to the trustee. To exercise the repurchase right, you must deliver, on or before the 30th day (or such greater period as may be required by applicable law) after the date of our notice, irrevocable written notice to the trustee of your exercise of your repurchase right, together with the notes with respect to which that right is being exercised. We are required to make the repurchase on a date that is no later than 45 days after your notice to the trustee.

A Change in Control is deemed to have occurred at such time any of the following occurs:

(1) any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, (A) acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of our capital stock entitling that person to exercise more than 50% of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors; however, any acquisition by us, any of our subsidiaries, any of our employee benefit plans, Robert Greenberg or a Related Party will not trigger this provision or (B) succeeds in having sufficient of its nominees (who are not supported by a majority of the then current board of directors) elected to the board of directors such that such nominees, when added to any existing directors remaining on the board of directors after such election who are affiliates of or acting in concert with such person, shall constitute a majority of the board of directors,

(2) we consolidate with or merge with or into any other person or another person merges into us, except if the transaction satisfies any of the following:

- the transaction is a merger (A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock and (B) pursuant to which holders of our common stock immediately prior to the transaction have, directly or indirectly, 50% or more of the total voting power of all shares of capital stock or other ownership interest or the continuing or surviving person entitled to vote generally in elections of directors of the continuing or surviving person immediately after the transaction, or
- the transaction is a merger effected only to change our jurisdiction of incorporation and it results in a reclassification, conversion or exchange of outstanding shares of our common stock only into shares of common stock of us or another corporation, or

(3) we convey, transfer, sell, lease or otherwise dispose of all or substantially all of our assets to another person.

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However, a Change in Control is not deemed to have occurred if the average of the high and low sales price per share of our Class A common stock for any five trading days within (1) the period of 10 consecutive trading days ending immediately after the later of the Change in Control and the public announcement of the Change in Control, in the case of a Change in Control under clause (1)(A) above relating to an acquisition of capital stock not involving a merger or consolidation covered by clause (2) below, or (2) the period of 10 consecutive trading days ending immediately before the Change in Control, in the case of a Change in Control under clause (1)(B), (2) or (3) above, in each case, equals or exceeds 105% of the conversion price of the notes in effect on each of those trading days.

“Related Party” means (1) any parent, spouse, sibling or descendent of (a) Robert Greenberg, (b) M. Susan Greenberg or (c) any of Robert Greenberg’s children or grandchildren (collectively, “Immediate Family”) or (2) any trust, corporation, partnership, estate or other entity of which the beneficiaries, stockholders, partners or owners holding a 75% or greater interest consist of Robert Greenberg and/or members of his Immediate Family; provided that, in the case of clause (2), any interest holder other than Robert Greenberg or any member of his Immediate Family shall not be deemed a Related Party.

For purposes of these provisions:

- the conversion price is equal to \$1,000 divided by the conversion rate, and
- whether a person is beneficial owner will be determined in accordance with Rule 13d-3 under the Exchange Act.

Any repurchase of notes arising as a result of the Change in Control will be made in compliance with all applicable laws, rules and regulations, including, if applicable, Regulation 14E under the Exchange Act and the rules thereunder and all other applicable federal and state securities laws. To the extent the provisions of any securities laws or regulations conflict with the provisions of this covenant, our compliance with such laws and regulations shall not be deemed to cause a breach of our obligations under the Indenture.

We may, to the extent permitted by applicable law, at any time purchase notes in the open market or by tender or by private agreement. Any note that we so purchase may, to the extent permitted by applicable law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any notes surrendered may not be reissued or resold and will be canceled promptly.

The definition of Change in Control includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or subsequently all of our assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, your ability to require us to repurchase your notes as a result of conveyance, transfer, sale, lease or other disposition of less than all of our assets may be uncertain.

The foregoing provisions would not necessarily provide you with protection if we are involved in a highly leveraged or other transaction that may adversely affect you.

Our ability to repurchase notes upon the occurrence of a Change in Control is subject to important limitations. Some of the events constituting a Change in Control in addition to the act of repurchasing the notes could cause an event of default or be prohibited or limited by the terms of our Senior Debt. As a result, any repurchase of the notes could, absent a waiver, be prohibited under the Indenture’s subordination provisions until the Senior Debt is paid in full. Further, we may not have the financial resources, or be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase right deliver to us. If we were to fail to repurchase the notes when required following a Change in Control, an Event of Default would occur, whether or not such repurchase is permitted by the Indenture’s subordination provisions. Any such default may, in turn, cause a default under our Senior Debt. For more details, see “— Subordination.”

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### **Mergers and Sales of Assets**

Without the consent of the holders of the notes, we may not consolidate with or merge with or into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, and we may not permit any person to consolidate with or merge with or into us or convey, transfer, sell or lease such person's properties and assets substantially as an entirety to us, unless each of the following requirements is met:

- the person formed by the consolidation or into or with which we merge or the person to which our properties and assets are conveyed, transferred, sold or leased, is (A) a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any State or the District of Columbia or (B) organized under the laws of a jurisdiction outside the United States and has common stock or American Depositary Shares representing such common stock traded on a national securities exchange in the United States, including The Nasdaq Stock Market, Inc. and, in each case, if other than us, expressly assumes the due and punctual payment of the principal of, any premium, and interest (and Liquidated Damages, if any) on the notes and the performance of our other covenants under the Indenture;
- immediately after giving effect to that transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and other specific conditions are met; and
- an officer's certificate and legal opinion relating to these conditions is delivered to the trustee.

Upon any consolidation or merger or any transfer of all or substantially all of our assets, the successor corporation formed by such consolidation or into which we are merged or to which such transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of, us under the Indenture with the same effect as if such successor corporation had been named in the Indenture as our company, and we shall be released from the obligations under the notes and the Indenture except in the case of a lease or with respect to any obligations that arise from, or are related to, such transaction.

### **Events of Default**

The following are Events of Default under the Indenture:

- we fail to pay principal of or any premium, if any, on any note when due, whether or not the payment is prohibited by the Indenture's subordination provisions
- we fail to pay any interest (including Liquidated Damages, if any) on any note when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture's subordination provisions
- we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture's subordination provisions
- we fail to perform or observe any other term, covenant or agreement contained in the notes or the Indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes
- we fail to pay by the end of any applicable grace period, if any, after maturity of the principal of any indebtedness for money borrowed by us or any of our significant subsidiaries, if any, in excess of \$10 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated, such acceleration is not rescinded or annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes
- we fail to deliver shares of Class A common stock, together with cash instead of fractional shares, when those shares of Class A common stock or cash instead of fractional shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date, or



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- certain events of bankruptcy, insolvency or reorganization with respect to us and our significant subsidiaries specified in the Indenture.

Subject to the provisions of the Indenture relating to the trustee's duties, if an Event of Default exists, the trustee will not be obligated to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless they have offered to the trustee reasonable indemnity. Subject to such trustee indemnification provisions, the holders of a majority in aggregate principal amount of the outstanding notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee, provided that such direction does not conflict with any rule of law or with the Indenture, and the trustee may take any other action the trustee deems proper which is not inconsistent with such direction.

If an Event of Default, other than an Event of Default arising from events of bankruptcy, insolvency or reorganization, occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the outstanding notes may accelerate the maturity of all notes. After acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of outstanding notes may, under circumstances set forth in the Indenture, rescind the acceleration if all Events of Default, other than the non-payment of principal of the notes which have become due solely because of the acceleration, have been cured or waived as provided in the Indenture. If an Event of Default arising from events of bankruptcy, insolvency or reorganization occurs and is continuing, then the principal of, and accrued interest on, all of the notes will automatically become immediately due and payable without any declaration or other act on the part of the holders of the notes or the trustee.

You do not have any right to institute any proceeding relating to the Indenture, or to appoint a receiver or a trustee, or for any other remedy under the Indenture, unless:

- you have given the trustee written notice of a continuing Event of Default
- the registered holders of at least 25% of the aggregate principal amount of all outstanding notes have made a written request of the trustee to take action because of the default and have furnished reasonable indemnification to the trustee against the cost, liabilities and expenses of taking such action
- the trustee shall not have taken action for 60 days after receiving such notice and offer of indemnification, and
- the trustee has not received any direction inconsistent with such written request from the holders of a majority of the aggregate principal amount of all outstanding notes during such 60-day period.

These limitations do not apply to a suit for the enforcement of payment of the principal of, or any premium or interest (and Liquidated Damages, if any) on, a note, or the repurchase price payable for a note on or after the due dates for such payments, or of the right to convert the note in accordance with the Indenture.

We will furnish to the trustee annually a statement as to our performance of our obligations under the Indenture and as to any default in performance.

### **Modification and Waiver**

The Indenture contains provisions permitting us and the trustee to enter into a supplemental indenture for certain limited purposes without the consent of the holders of the notes. With the consent of the holders of not less than a majority in aggregate principal amount of the notes at the time outstanding, we and the trustee are permitted to amend or supplement the Indenture or any supplemental indenture or modify the rights of the holders, provided, that no such modification may, without the consent of each holder affected thereby:

- change the stated maturity of the principal or interest of any note
- reduce the principal amount, any premium or interest on any note
- reduce the amount payable on any note upon a redemption at our option



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- amend or modify our obligation to make or consummate a repurchase offer upon a Change in Control in a manner adverse to the holders of the notes after our obligation to make a Change in Control repurchase offer arises
- change the place or currency of payment on any note
- impair the right to institute suit for the enforcement of any payment on or conversion of any note
- modify the subordination provisions in a manner that is adverse to the holder of any notes
- adversely affect the right of any holder of notes to convert its notes
- reduce the percentage of holders whose consent is needed to modify, amend or waive any provision in the Indenture, or
- modify the provisions dealing with modification and waiver of the Indenture, except to increase any required percentage or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding note affected thereby.

The holders of a majority in principal amount of the outstanding notes may waive our compliance with certain restrictive provisions of the Indenture. The holders of a majority in principal amount of the outstanding notes may waive any past default, except a default in the payment of principal, any premium, interest (or Liquidated Damages, if any) or the repurchase price.

Notes will not be considered outstanding if money for their payment or redemption has been deposited or set aside in trust for the holders.

### **Registration Rights**

The following summarizes some, but not all, of the registration rights provided in the registration rights agreement (the “Registration Rights Agreement”) that we entered into with the Initial Purchaser on April 9, 2002. You should refer to the Registration Rights Agreement, a copy of which we will make available to beneficial holders of the notes upon request, for a full description of the registration rights that apply to the notes.

In the Registration Rights Agreement we agreed, for the benefit of the holders of the notes and the shares of Class A common stock issuable upon conversion of the notes, but excluding securities that are eligible for disposition under Rule 144 of the Securities Act, that we would, at our expense:

- file with the SEC, on or prior to 90 days following April 9, 2002, a shelf registration statement covering resales of the Registrable Securities (as defined in the Registration Rights Agreement),
- use our reasonable best efforts to cause the shelf registration statement to be declared effective under the Securities Act on or prior to 180 days following April 9, 2002, subject to our right to postpone having the shelf registration statement declared effective for an additional 60 days in limited circumstances, and
- use our reasonable best efforts to keep effective the shelf registration statement until, subject to certain exceptions set forth in the Registration Rights Agreement, the earlier of:
  - (1) the date on which there are no outstanding Registrable Securities, or
  - (2) the expiration of the holding period applicable to such Registrable Securities held by persons who are not affiliates of Skechers under Rule 144(k) under the Securities Act or any successor previously subject to specific permitted exceptions (the “Effectiveness Period”).

We agreed to provide to each holder of Registrable Securities copies of this prospectus, notify each holder when the shelf registration statement has become effective and take certain other actions required to permit public resales of the Registrable Securities.

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Upon written notice to all the holders of notes, we will be permitted to suspend the use of the prospectus that is part of the shelf registration statement in connection with sales of Registrable Securities during prescribed periods of time if we possess material non-public information the disclosure of which would have a material adverse effect on us. The periods during which we can suspend the use of the prospectus may not exceed a total of 60 consecutive days. Upon receipt of such notice, the holders of notes will be required to cease disposing of securities under the prospectus and to keep the notice confidential.

Liquidated damages (“Liquidated Damages”) will accrue on the notes that are transfer restricted securities under the Registration Rights Agreement if any of the following events, which we refer to as Registration Defaults, occurs:

- on or prior to 90 days following April 9, 2002, a shelf registration statement has not been filed with the SEC,
- on or prior to 180 days following April 9, 2002, the SEC does not declare the shelf registration statement effective, or
- the shelf registration statement ceases to be effective, or we otherwise prevent or restrict holders of Registrable Securities from making sales under the shelf registration statement, for more than 60 consecutive days.

In any case, Liquidated Damages will accrue on the notes that are transfer restricted securities at a rate of 0.5% of the principal amount per annum from and including the day following the Registration Default to, but excluding, the day on which the Registration Default is cured. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date following the date on which the Liquidated Damages begin to accrue. Under no circumstances will we be required to accrue Liquidated Damages in excess of 0.5% per annum at any time.

A holder who elects to sell any Registrable Securities pursuant to the shelf registration statement will be required to be named as a selling securityholder in the related prospectus, may be required to deliver a prospectus to purchasers, may be subject to certain civil liability provisions under the Securities Act in connection with those sales and will be bound by the provisions of the registration rights agreement that apply to a holder making such an election, including certain indemnification provisions.

We mailed a notice and questionnaire to the holders of Registrable Securities not fewer than 30 calendar days prior to the time we intend in good faith to have the shelf registration statement declared effective (the “Effective Time”).

No holder of Registrable Securities was entitled to be named as a selling securityholder in the shelf registration statement as of the Effective Time, and no holder of Registrable Securities was entitled to use the prospectus that is part of the shelf registration statement for offers and resales of Registrable Securities at any time, unless such holder has returned a completed and signed notice and questionnaire to us by the deadline for response set forth in the notice and questionnaire. Holders of Registrable Securities will, however, have at least 20 calendar days from the date on which the notice and questionnaire was first mailed to them to return a completed and signed notice and questionnaire to us.

Beneficial owners of Registrable Securities who had not returned a notice and questionnaire by the questionnaire deadline described above may receive another notice and questionnaire from us upon request. When we receive a completed and signed notice and questionnaire prior to the Effective Date of the Registration Statement, we will include the Registrable Securities covered thereby in the shelf registration statement, subject to restrictions on the timing and number of supplements to the shelf registration statement provided in the Registration Rights Agreement.

We agreed in the Registration Rights Agreement to use our reasonable efforts to cause the shares of Class A common stock issuable upon conversion of the notes to be listed on the New York Stock Exchange. However, if the Class A common stock is not then listed on the New York Stock Exchange, we will use our reasonable efforts to cause the shares of Class A common stock issuable upon conversion of the notes to be

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quoted or listed on whichever market or exchange the Class A common stock is then quoted or listed, if any, on or prior to the effectiveness of the shelf registration statement.

We gave notice to holders of the notes by mail to the addresses of the holders as they appear in the Security Register. Notices will be deemed to have been given on the date of mailing.

### **Replacement of Notes**

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

### **No Personal Liability of Stockholders, Officers, Directors and Employees**

No direct or indirect stockholder, officer, director or employee, as such, past, present or future of Skechers, or any successor entity, shall have any personal liability in respect of our obligations under the Indenture or the notes solely by reason of his or its status as such stockholder, officer, director or employee.

### **The Trustee**

The trustee for the holders of notes issued under the Indenture is Wells Fargo Bank, National Association. If an Event of Default occurs, and is continuing, the trustee is required to use the degree of care of a prudent person in the conduct of his own affairs in the exercise of its powers. Subject to these provisions, the trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request of any holders of notes, unless they have offered the trustee reasonable security or indemnity.

## DESCRIPTION OF CAPITAL STOCK

*Set forth below is a summary of some relevant provisions of our Certificate of Incorporation and Bylaws and Delaware law in effect at the date of this prospectus. This summary does not purport to be complete and is qualified in its entirety by reference to the full Certificate of Incorporation and Bylaws. The full text of the Certificate of Incorporation and Bylaws is available at our principal executive offices in Manhattan Beach, California.*

Our authorized capital stock consists of 160,000,000 shares of common stock and 10,000,000 shares of preferred stock. Of the 160,000,000 shares of common stock authorized, 100,000,000 shares are designated as Class A common stock and 60,000,000 shares are designated as Class B common stock. As of December 31, 2001, there were 15,287,086 shares of Class A common stock outstanding, 21,468,309 shares of Class B common stock outstanding and no shares of preferred stock outstanding.

### **Class A Common Stock and Class B Common Stock**

#### ***General***

The holders of our Class A common stock and Class B common stock have identical rights except with respect to voting, conversion and transfer. All shares of Class B common stock outstanding upon the effective date of this prospectus, and the shares of Class A common stock offered hereby will, upon issuance and sale, be fully paid and nonassessable.

#### ***Voting Rights***

Holders of our Class A common stock are entitled to one vote per share while holders of our Class B common stock are entitled to ten votes per share on all matters to be voted on by the stockholders. Holders of shares of Class A common stock and Class B common stock are not entitled to cumulate their votes in the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority of the votes entitled to be cast by all shares of Class A common stock and Class B common stock present in person or represented by proxy, voting together as a single class, subject to any voting rights granted to holders of any shares of our preferred stock. Except as otherwise provided by law or in our Certificate of Incorporation, and subject to any voting rights granted to holders of any outstanding shares of our preferred stock, amendments to our Certificate of Incorporation must be approved by a majority of the votes entitled to be cast by all shares of our Class A common stock and Class B common stock present in person or represented by proxy, voting together as a single class. However, amendments to our Certificate of Incorporation that would alter or change the powers, preferences or special rights of our Class A common stock so as to affect them adversely also must be approved by a majority of the votes entitled to be cast by the holders of our Class A common stock, voting as a separate class. Any amendment to our Certificate of Incorporation to increase the authorized shares of any class requires the approval of a majority of the votes entitled to be cast by all shares of our Class A common stock and Class B common stock present in person or represented by proxy, voting together as a single class, subject to the rights set forth in any series of preferred stock created as described below.

#### ***Dividends, Distributions and Stock Splits***

Holders of our Class A common stock and Class B common stock will share equally on a per share basis in any dividend declared by our Board of Directors, subject to any preferential rights of any outstanding shares of our preferred stock.

Dividends or distributions consisting of shares of our Class A common stock and Class B common stock may be paid only as follows: (i) shares of Class A common stock may be paid only to holders of Class A common stock, and shares of Class B common stock may be paid only to holders of Class B common stock; and (ii) the number of shares so paid will equal on a per share basis with respect to each outstanding share of Class A common stock and Class B common stock. In the case of dividends or distributions consisting of other voting shares of ours, we will declare and pay such dividends in two separate classes of such voting securities,

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identical in all respects, except that the voting rights of each such security paid to the holders of the Class A common stock shall be one-tenth of the voting rights of each such security paid to the holders of Class B common stock, and such security paid to the holders of Class B common stock shall convert into the security paid to the holders of the Class A common stock upon the same terms and conditions applicable to the Class B common stock. In the case of dividends or distributions consisting of securities convertible into, or exchangeable for, our voting securities, we will provide that such convertible or exchangeable securities and the underlying securities be identical in all respects, except that the voting rights of each security underlying the convertible or exchangeable security paid to the holders of the Class A common stock shall be one-tenth of the voting rights of each security underlying the convertible or exchangeable security paid to the holders of Class B common stock, and such underlying securities paid to the holders of Class B common stock shall convert into the security paid to the holders of the Class A common stock upon the same terms and conditions applicable to the Class B common stock.

We may not reclassify, subdivide or combine shares of either class of our common stock without at the same time proportionally reclassifying, subdividing or combining shares of the other class.

### ***Conversion of Class B Common Stock***

A share of our Class B common stock is convertible into a share of our Class A common stock on a share-for-share basis at the option of the holder thereof at any time, or automatically upon transfer to a person or entity which is not a Permitted Transferee (as defined in our Certificate of Incorporation). In general, Permitted Transferees will include all holders of the Class B common stock outstanding immediately prior to this offering and any Person (as defined in our Certificate of Incorporation) that is an affiliate, spouse or descendent of any such holder, their estates or trusts for their benefit. Our Class A common stock has no conversion rights.

### ***Liquidation***

In the event of any dissolution, liquidation, or winding up of our affairs, whether voluntary or involuntary, after payment of our debts and other liabilities and making provision for the holders of shares of our preferred stock, if any, our remaining assets will be distributed ratably among the holders of our Class A common stock and Class B common stock, treated as a single class.

### ***Mergers and Other Business Combination***

Upon our merger, combination or other similar transaction in which shares of our common stock are exchanged for or changed into other stock or securities, cash and/or any other property, holders of each class of our common stock will be entitled to receive an equal per share amount of stock, securities, cash and/or any other property, as the case may be, into which or for which each share of any other class of our common stock is exchanged or changed; *provided* that in any transaction in which shares of capital stock are distributed, such shares so exchanged for or changed into may differ as to voting rights and certain conversion rights to the extent and only to the extent that the voting rights and certain conversion rights of our Class A common stock and Class B common stock differ at that time.

### ***Other Provisions***

The holders of our Class A common stock and Class B common stock are not entitled to preemptive rights. There are no redemption provisions or sinking fund provisions applicable to our Class A common stock or Class B common stock.

### **Preferred Stock**

Our Board of Directors has the authority, without further action by our stockholders, to issue up to 10,000,000 shares of preferred stock in one or more series, and to fix the designations, rights, preferences, privileges, qualifications and restrictions thereof including dividend rights, conversion rights, voting rights, rights and terms of redemption, liquidation preferences and sinking fund terms, any or all of which may be

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greater than the rights of our common stock. Our Board of Directors, without stockholder approval, can issue preferred stock with voting, conversion and other rights which could adversely affect the voting power and other rights of the holders of our common stock. Preferred stock could thus be issued quickly with terms calculated to delay or prevent a change in control of us, or to make removal of management more difficult. In certain circumstances, such issuance could have the effect of decreasing the market price of our common stock. The issuance of preferred stock may have the effect of delaying, deterring or preventing a change in control of us without action by our stockholders including, but not limited, to, a tender offer to purchase shares of our common stock at a premium over then current market prices. We have no present plan to issue any shares of preferred stock.

### **Registration Rights**

We have entered into a registration rights agreement with the Greenberg Family Trust, of which Robert Greenberg, our Chairman of the Board and Chief Executive Officer is a trustee, and Michael Greenberg, our President, pursuant to which we have agreed that we will, on up to two separate occasions per year, register up to one-third of the shares of our Class A common stock issuable upon conversion of their shares of our Class B common stock beneficially owned by each of them as of the closing of our initial public offering of Class A common stock on June 14, 1999 in any one year provided, among other conditions, that the underwriters of any such offering have the right to limit the number of shares included in such registration. We also agreed that, if we shall cause to be filed with the Commission a registration statement, each such stockholder shall have the right to include up to one-third of the shares of Class A common stock issuable upon conversion of their Class B common stock beneficially owned by each of them as of the closing of our initial public offering of Class A common stock on June 14, 1999 in such registration statement provided, among other conditions, that the underwriters of any such offering have the right to limit the number of shares included in such registration. All expenses of such registrations shall be at our expense. However, the Greenberg Family Trust and Michael Greenberg have agreed to waive such rights with respect to the registration rights to be granted upon the issuance of the notes to the holders of such notes and our Class A common stock into which they may be converted.

### **Anti-takeover Effects of Provisions of the Company's Charter and Bylaws**

Our Bylaws provide that our Board of Directors is divided into three classes. Class I Directors serve until the annual meeting of stockholders in 2003 and thereafter for the terms of three years until their successors have been elected and qualified. Class II Directors serve until the annual meeting of stockholders in 2004 and thereafter for terms of three years until their successors have been elected and qualified. Class III Directors serve until the annual meeting of stockholders in 2002 and thereafter for terms of three years until their successors have been elected and qualified. Our stockholders have no cumulative voting rights and the stockholders representing a majority of the votes entitled to be cast by all outstanding shares of our Class A common stock and Class B common stock present in person or represented by proxy, voting together as a single class, are able to elect all of the directors. Our Bylaws also provide that any action that is required to be or may be taken at any annual or special meeting of our stockholders, may, if such action has been earlier approved by our Board, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Our Bylaws provide that only our Board of Directors or Chairman may call a special meeting of the stockholders.

The classification of our Board of Directors and lack of cumulative voting makes it more difficult for our existing stockholders to replace the Board of Directors as well as for any other party to obtain control of us by replacing the Board. Since our Board of Directors has the power to retain and discharge our officers, these provisions could make it more difficult for existing stockholders of another party to effect a change in management.

These and other provisions may have the effect of deterring hostile takeovers or delaying changes in control or management of us. These provisions are intended to enhance the likelihood of continued stability in

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the composition of our Board of Directors and in the policies furnished by our Board of Directors and to discourage certain types of transactions that may involve an actual or threatened change of control of us. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. These provisions are also intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they may also inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of changes in our management.

### **Section 203 of the Delaware General Corporation Law**

Generally, Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a broad range of “business combinations” with an “interested stockholder” (defined generally as a person owning 15% or more of a corporation’s outstanding voting stock) for three years following the date such person became an interested stockholder unless (i) before the person becomes an interested stockholder, the transaction resulting in such person becoming an interested stockholder or the business combination is approved by the board of directors of the corporation, (ii) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of the outstanding voting stock of the corporation (excluding shares owned by directors who are also officers of the corporation or shares held by employee stock plans that do not provide employees with the right to determine confidentially whether shares held subject to the plan will be tendered in a tender offer or exchange offer), or (iii) on or after such date on which such person became an interested stockholder the business combination is approved by the board of directors and authorized at an annual or special meeting, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock excluding shares owned by the interested stockholders. The restrictions of Section 203 do not apply, among other reasons, if a corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by Section 203, provided that, in addition to any other vote required by law, such amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. Moreover, an amendment so adopted is not effective until twelve months after its adoption and does not apply to any business combination between the corporation and any person who became an interested stockholder of such corporation on or prior to such adoption. Our Certificate of Incorporation and Bylaws do not currently contain any provisions electing not to be governed by Section 203 of the DGCL.

Section 203 of the DGCL may discourage persons from making a tender offer for or acquisitions of substantial amounts of our Class A common stock. This could have the effect of inhibiting changes in management and may also prevent temporary fluctuations in our Class A common stock that often result from takeover attempts.

### **1998 Stock Option Plan**

For a description of our 1998 Stock Option, Deferred Stock and Restricted Stock Plan, see Note 5 of the notes to our consolidated financial statements incorporated herein by reference.

### **1998 Employee Stock Purchase Plan**

For a description of our 1998 Employee Stock Purchase Plan, see Note 5 of the notes to our consolidated financial statements incorporated herein by reference.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our Class A common stock is American Stock Transfer & Trust Company, New York, New York.



## CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of certain anticipated United States federal income tax consequences relating to the purchase, ownership and disposition of the notes or shares of our Class A common stock into which the notes may be converted, and is for general information purposes only. This summary is based on the Internal Revenue Code 1986, as amended (the “Code”), Treasury regulations promulgated thereunder and administrative and judicial interpretations thereof, all as of the date hereof, and all of which are subject to change and subject to differing interpretations, possibly with retroactive effect. We have not sought any ruling from the Internal Revenue Service (the “IRS”) with respect to the statements made and conclusions reached in the following summary. Therefore, there can be no assurance that the IRS will not successfully challenge one or more of the statements or conclusions described in this offering memorandum.

This summary does not discuss all aspects of United States federal income taxation which may be important to particular holders in light of their individual circumstances or to certain types of holders subject to special tax rules, such as financial institutions, real estate investment trusts, regulated investment companies, broker-dealers, dealers in securities or currencies, insurance companies, tax-exempt investors, partnerships or other passthrough entities, persons holding notes in connection with a hedging straddle, conversion, “synthetic security” or other integrated transaction for United States federal income tax purposes, or holders whose “functional currency” is not the U.S. dollar. Further, this summary does not include any description of any alternative minimum tax consequences, United States federal estate or gift tax laws or the tax laws of any state, local or foreign government that may be applicable to the notes, our common stock acquired upon conversion of a note, and holders thereof. This summary assumes that holders will hold the notes and the shares of our common stock into which the notes are convertible as “capital assets” (generally, for investment). Except as otherwise indicated, this discussion does not address any tax consequences that may be applicable to holders other than original purchasers acquiring notes pursuant to this offer at the price offered herein.

**Each prospective purchaser of the notes should consult its tax advisor with respect to the tax consequences to it of the purchase, ownership and disposition of the notes or our common stock acquired upon conversion of a note in light of its particular circumstances, including tax consequences under state, local, foreign, United States federal estate or gift and other tax laws and the possible effects of changes in United States federal income and other tax laws.**

For purposes of this summary, a “U.S. holder” is a beneficial owner of notes or shares of our common stock into which the notes may be converted that is, for United States federal income tax purposes, (i) an individual who is a citizen or resident of the United States, (ii) a corporation created in or organized under the laws of the United States or any State or political subdivision thereof, (iii) an estate, the income of which is includible in gross income for United States federal income tax purposes regardless of its source or (iv) a trust, the administration of which is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust or, if the trust was in existence on August 20, 1996, has elected to continue to be treated as a United States person. A “Non-U.S. holder” is a beneficial owner of notes or shares of our common stock into which the notes may be converted that is not a U.S. holder. All references in this summary to “holders” are to both U.S. and Non-U.S. holders.

If a partnership (including for this purpose any entity treated as a partnership for United States federal income tax purposes) is a beneficial owner of a note (or our Class A common stock acquired upon conversion of a note), the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner that is a partnership and partners in such a partnership should consult their tax advisors about the United States federal income tax consequences of the purchase, ownership and disposition of the notes or our Class A common stock acquired upon conversion of a note.

## U.S. Holders

### *Payments of Interest on the Notes*

U.S. holders generally will be required to recognize any stated interest as ordinary income at the time it is paid or accrued on the notes in accordance with such U.S. holders' method of accounting for United States federal income tax purposes. In certain circumstances, we may be obligated to pay holders of the notes amounts in excess of stated interest. As more fully described under "Description of the Notes — Registration Rights," the interest rate on the notes is subject to increase by the payment of liquidated damages if, among other things, the notes are not registered with the SEC within prescribed time periods. As more fully described under "Description of Notes — Provisional Redemption by Skechers", we may repurchase the notes upon the occurrence of certain events for amounts in excess of the principal amounts of such notes. As more fully described under "Description of Notes — Repurchase at Option of Holders," a holder may require us to repurchase notes for amounts in excess of the principal amount of such notes upon a change in control as described therein. Certain rules under applicable Treasury regulations generally allow prospective payments of such excess amounts to be disregarded in computing a holder's interest income if the possibility of paying such amounts is treated as a remote or incidental contingency. We intend to treat the possibility that we will pay any such excess amounts as remote or incidental contingencies within the meaning of such regulations and, therefore, in the unlikely event an additional amount becomes due on the notes, we believe U.S. holders should be taxable on such amount at the time it accrues or is received in accordance with each such U.S. holder's method of accounting for United States federal income tax purposes. Our determination that the possibility that such additional amounts will have to be paid is a remote or incidental contingency is binding on each U.S. holder unless the U.S. holder explicitly discloses in the manner required by applicable Treasury regulations that its determination is different from ours. Our determinations, as discussed above, are not, however, binding on the IRS.

### *Market Discount*

A U.S. holder that purchases, subsequent to its original issuance, a note for a price that is less than the principal amount will be subject to the rules relating to market discount. Subject to a de minimis exception, any gain recognized by the U.S. holder upon a sale or other disposition of the note will be treated as ordinary income rather than capital gain to the extent of that portion of the market discount that accrued prior to the disposition. Market discount generally accrues on a straight line basis over the remaining term of the note, but the holder can elect to compute accrued market discount based on the economic yield of the note. The holder of a note with market discount might be required to recognize gain to the extent of accrued market discount even if the disposition takes a form (such as a gift) in which the holder would not normally be required to recognize gain. The market discount rules will not affect the tax consequences to the holder upon conversion of the note, which will generally be tax-free under the rules more fully described below under "Conversion of the Notes into Common Stock". The market discount that accrued prior to conversion, however, will be carried over to the stock received on conversion, and, to that extent, any gain recognized by U.S. holder upon disposition of the stock will be treated as ordinary income. Finally, if the U.S. holder's purchase of the notes is debt-financed, the U.S. holder will not be entitled to deduct interest expense allocable to accrued market discount until it recognizes the corresponding income. The U.S. holder of a note with market discount may elect to include the market discount in income as it accrues. If this election is made, any gain recognized on a disposition of the note would be entirely capital gain, and the rules deferring the deduction of interest on related loans would not apply.

### *Premium*

If a U.S. holder purchases a note for an amount in excess of the sum of all amounts payable on the note after the date of acquisition (other than payments of qualified stated interest), the holder will be considered to have purchased the note with "amortizable bond premium." Generally, a U.S. holder may elect to amortize the premium as an offset to qualified stated interest income in respect of the note, using a constant yield method prescribed under applicable Treasury regulations, over the remaining term of the note. Any such premium is not amortizable, however, to the extent it reflects the value of the conversion privilege of the note.

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A U.S. holder who elects to amortize bond premium must reduce the holder's tax basis in the note by the amount of the premium used to offset qualified stated interest income as set forth above. An election to amortize bond premium applies to all taxable debt obligations then owed and thereafter acquired by the holder and may be revoked only with the consent of the Internal Revenue Service.

### ***Sale, Redemption or Repurchase of the Notes***

Except as set forth below under "Conversion of the Notes into Common Stock," a U.S. holder generally will recognize capital gain or loss upon the sale, redemption or other taxable disposition of the notes in an amount equal to the difference between the amount realized on the disposition, other than amounts attributable to accrued but unpaid interest on the notes not previously included in income or, in the case of a subsequent purchase of notes, amounts attributable to market discount on the note that accrued prior to the disposition (which will be taxable as ordinary interest income), and the U.S. holder's adjusted tax basis in such notes. A U.S. holder's tax basis in a note generally will be equal to the cost of the note to such U.S. holder, increased, in the case of a subsequent purchaser, by any market discount previously included in income in respect thereof, and reduced (but not below zero) by any payments on the note other than payments of qualified stated interest and, in the case of a subsequent purchaser, by any premium that the U.S. holder has taken into account. Any such capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period for the notes exceeds one year at the time of disposition.

### ***Adjustment of the Conversion Price***

Certain adjustments to, or failure to adjust, the conversion price of the notes may cause U.S. holders of notes or shares of our common stock to be treated as having received a distribution on such notes or stock, to the extent such adjustments or failure to adjust result in an increase in the proportionate interest of such U.S. holders in our company. Such a distribution may be taxable to U.S. holders as a dividend, return of capital or capital gain in accordance with the earnings and profits rules discussed above under "Distributions on the Common Stock."

### ***Conversion of the Notes into Common Stock***

Subject to the discussion under "Market Discount" above, a U.S. holder generally will not recognize income, gain or loss upon conversion of the notes into our common stock, except with respect to the receipt of cash in lieu of fractional shares, as described below. A U.S. holder's tax basis in such common stock will be the same as the U.S. holder's adjusted tax basis in the corresponding notes converted at the time of conversion (reduced by any tax basis allocable to a fractional share, as described below), and the U.S. holder's holding period for such common stock will include the U.S. holder's holding period for the notes that were converted.

Cash received in lieu of a fractional share of common stock upon conversion of the notes into our common stock will be treated as a payment in exchange for such fractional share (deemed to be received by the U.S. holder on conversion), and generally should result in capital gain or loss measured by the difference between the cash received of such fractional share and the U.S. holder's adjusted tax basis allocable to the fractional share.

### ***Distributions on the Common Stock***

Distributions on our common stock received upon conversion of the notes will constitute dividends, taxable to U.S. holders as ordinary income, to the extent of our current and accumulated earnings and profits as determined under United States federal income tax principles. To the extent that a U.S. holder receives distributions on shares of our common stock that would otherwise constitute dividends for United States federal income tax purposes but that exceed our current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital, reducing the U.S. holder's tax basis in the shares of our common stock. Any such non-dividend distributions in excess of the U.S. holder's tax basis in the shares of our common stock will generally be treated as capital gain. Subject to applicable limitations, dividends paid to U.S. holders that are corporations may qualify for the dividends-received deduction.

### ***Disposition of the Common Stock***

Subject to the discussion under “Market Discount” above, a U.S. holder generally will recognize capital gain or loss upon the disposition of shares of our common stock in an amount equal to the difference between the amount realized on such disposition and the U.S. holder’s adjusted tax basis in such common stock. Any such gain or loss will generally be long-term capital gain or loss if the U.S. holder’s holding period for our common stock exceeds one year at the time of such sale or exchange.

### **Non-U.S. Holders**

#### ***Payments of Interest on the Notes***

Payments of interest on a note generally will not be subject to United States federal withholding tax, provided that (i) the Non-U.S. holder does not own, actually or constructively, 10% or more of the total combined voting power of all our voting stock, (ii) the Non-U.S. holder is not a controlled foreign corporation related, directly or indirectly, to us through stock ownership within the meaning of United States federal income tax laws and (iii) the Non-U.S. holder either (A) provides to us or our paying agent a statement signed under penalties of perjury on the applicable IRS form that includes its name and address and certifies that it is not a United States person in compliance with applicable requirements and satisfies all documentary evidence requirements for establishing that it is not a United States person or (B) holds its note through certain foreign intermediaries or certain foreign partnerships and such Non-U.S. holder and entities satisfy certain certification and other documentary evidence requirements.

If a Non-U.S. holder does not satisfy the requirements described above, payments of interest on a note will be subject to 30% United States federal withholding tax unless such Non-U.S. holder provides to us or our paying agent the applicable IRS form in which the Non-U.S. holder either (i) claims an exemption from or reduction in withholding under an applicable income tax treaty or (ii) states that interest paid on the note is not subject to United States federal withholding tax because such interest is effectively connected with such Non-U.S. holder’s conduct of a trade or business in the United States.

#### ***Dividends on the Common Stock***

Dividends paid on our common stock to a Non-U.S. holder, and any deemed dividends resulting from an adjustment to or a failure to adjust the conversion price of the notes (see “U.S. Holders Adjustment of the Conversion Price,” above), generally will be subject to 30% United States federal withholding tax, unless (i) such Non-U.S. holder is eligible for an exemption from or reduction in withholding under an applicable tax treaty or (ii) the dividends are effectively connected with such Non-U.S. holder’s conduct of a trade or business in the United States. A Non-U.S. holder will be required to file the applicable IRS form to claim tax treaty benefits or to claim an exemption for effectively connected income.

#### ***Gain on Disposition of the Notes and Common Stock***

A Non-U.S. holder generally will not be subject to United States federal income or withholding tax with respect to gain realized on the disposition (as defined under “U.S. Holders — Sale, Redemption or Repurchase of the Notes,” above) of a note (except with respect to accrued and unpaid interest, which may be subject to United States federal withholding tax as described above under “Payments of Interest on the Notes”) or our common stock unless (i) such Non-U.S. holder is an individual present in the United States for 183 days or more in the taxable year of such disposition and certain other requirements are met, (ii) the gain is effectively connected with such Non-U.S. holder’s conduct of a trade or business in the United States or, if such Non-U.S. holder is a treaty resident, such gain is attributable to the Non-U.S. holder’s permanent establishment or a fixed base in the United States or (iii) such Non-U.S. holder is subject to provisions of United States tax law applicable to certain United States expatriates.

### ***Conversion of the Notes into Common Stock***

A Non-U.S. holder generally will not be subject to United States federal income tax on the conversion of a note into common stock. Cash received in lieu of a fractional share of common stock upon conversion of a note into our common stock, as discussed above under “U.S. Holders — Conversion of the Notes into Common Stock,” may be subject to the rules described above under “Gain on Disposition of the Notes and Common Stock.”

### ***Effectively Connected Income***

A Non-U.S. holder generally will be taxed in the same manner as a U.S. holder on interest paid on a note, dividends paid (or deemed paid) on our common stock or gain realized on the disposition of a note or our common stock if such items of income or gain are effectively connected with such Non-U.S. holder’s conduct of a trade of business in the United States or, if such Non-U.S. holder is a treaty resident, such items of income or gain are attributable to the Non-U.S. holder’s permanent establishment or a fixed base in the United States. Non-U.S. holders that are engaged in a trade or business within, or have a permanent establishment or a fixed base in the United States should consult their tax advisors as to the treatment of the items of income or gain discussed in the preceding sentence. In addition, a Non-U.S. holder that is a corporation may be subject to a branch profits tax at a rate of 30%, or such lower rate provided by an applicable income tax treaty, with respect to income or gain that is effectively connected with such Non-U.S. holder’s conduct of a trade of business in the United States.

### **Backup Withholding and Information Reporting**

*U.S. Holders.* Payments of interest on the notes or dividends on our common stock, or the proceeds of the disposition of either, may be subject to information reporting and United States federal backup withholding tax at the applicable rate (currently 30% for payments made in 2002, with such rate gradually being reduced over subsequent years to 28% for payments made in 2006) if the recipient of such payment fails to supply to us or our paying agent a taxpayer identification number, certified under penalties of perjury, as well as certain other information or otherwise establishes an exemption from backup withholding. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against that U.S. holder’s United States federal income tax liability, provided the required information is furnished to the IRS.

*Non-U.S. Holders.* A Non-U.S. holder may be required to comply with certification procedures to establish that the holder is not a United States person in order to avoid backup withholding tax with respect to our payments of principal and interest on the notes or dividends on our common stock, or the proceeds of the disposition of either. In addition, we must report annually to the IRS and to each Non-U.S. holder the amount of any interest and dividends paid to and the tax withheld (if any) with respect to such Non-U.S. holder. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. holder resides.

## SELLING SECURITYHOLDERS

We originally issued the notes in a private placement in April 2002. The notes were resold by the Initial Purchaser to qualified institutional buyers under Rule 144A under the Securities Act in transactions exempt from registration under the Securities Act. Selling securityholders may offer and sell the notes and the underlying Class A common stock pursuant to this prospectus.

The following table contains information as of May 1, 2002, with respect to the selling securityholders and the principal amount of notes and the underlying Class A common stock beneficially owned by each of the selling securityholders that may be offered using this prospectus.

Name <sup>(3)(4)</sup>	Principal Amount at Maturity of Notes Beneficially Owned That May be Sold	Percentage of Notes Outstanding	Number of Shares of Class A Common Stock That May be Sold <sup>(1)</sup>	Percentage of Class A Common Stock Outstanding <sup>(2)</sup>
Bank of New York	\$ 12,670,000	14.1%	487,908	3.0%
Bear, Stearns Securities Corp.	11,000,000	12.2	423,598	2.6
BNY-Barclays Capital Securities Ltd.	2,850,000	3.2	109,750	*
CIBC World Markets Corp.	1,450,000	1.6	55,837	*
Comerica Bank	630,000	0.7	24,260	1.5
Credit Suisse First Boston Corporation	8,500,000	9.4	327,325	2.0
Deutsche Bank Securities Inc.	4,000,000	4.4	154,035	*
First Union Securities, Inc.	8,250,000	9.2	317,698	2.0
Goldman, Sachs & Co.	7,500,000	8.3	288,817	1.8
J.P. Morgan Securities Inc.	4,000,000	4.4	154,035	*
J.P. Morgan Chase Bank	1,000,000	1.1	38,508	*
Morgan Stanley & Co. Incorporated	22,150,000	24.6	852,972	5.2
Prudential Securities Incorporated Custodial Account	3,000,000	3.3	115,526	*
UBS Warburg LLC	3,000,000	3.3	115,526	*

\* Less than 1%

- (1) Assumes conversion of all of the holder's notes at a conversion price of approximately \$25.9680 per share of Class A common stock. However, this conversion price will be subject to adjustment as described under "Description of Notes — Conversion Rights." As a result, the number of shares of Class A common stock issuable upon conversion of the notes may increase or decrease in the future.
- (2) Calculated based on Rule 13d-3(d)(1)(i) of the Exchange Act using 15,667,855 shares of Class A common stock outstanding as of March 25, 2002. In calculating this amount, we treated as outstanding the number of shares of Class A common stock issuable upon conversion of all of that particular holder's notes. However, we did not assume the conversion of any other holder's notes.
- (3) Information about other selling securityholders will be set forth in prospectus supplements, if required.
- (4) Assumes that any other holders of notes, or any future transferees, pledges, donees or successors of or from any such other holders of notes, do not beneficially own any Class A common stock other than the Class A common stock issuable upon conversion of the notes at the initial conversion rate.

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

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



## PLAN OF DISTRIBUTION

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

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

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

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

The notes and underlying Class A common stock may be sold in one or more transactions at:

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

These sales may be effected in transactions:

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

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

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

To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the notes and the underlying Class A common stock by the selling securityholders. Selling securityholder may not sell any or all of the notes and the underlying Class A common stock offered by them pursuant to this prospectus. In addition, we cannot assure you that any such selling securityholder will not transfer, devise or gift the notes and the underlying Class A common stock by other means not described in this prospectus.

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Our Class A common stock trades on the New York Stock Exchange under the symbol “SKX.” We cannot assure you as to the development of liquidity or any trading market for the notes. See “Risk Factors — There is no public market for the notes being offered and restrictions on transfer of the notes and the Class A common stock issuable upon conversion of the notes may significantly impair the liquidity of the notes.”

There can be no assurances that any selling securityholder will sell any or all of the notes or underlying Class A common stock pursuant to this prospectus. In addition, any notes or underlying Class A common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus.

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

Pursuant to the Registration Rights Agreement filed as an exhibit to this registration statement, we and the selling securityholders will be indemnified by the other against certain liabilities, including certain liabilities under the Securities Act or will be entitled to contribution in connection with these liabilities.

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

## **LEGAL MATTERS**

Certain matters relating to this offering are being passed upon for us by Kirkpatrick & Lockhart LLP, Los Angeles, California. A member of our Board of Directors is a partner at Kirkpatrick & Lockhart LLP and holds an option to purchase 30,000 shares of Class A common stock.

## **EXPERTS**

The consolidated financial statements and schedule of Skechers U.S.A., Inc. as of December 31, 2001 and 2000 and for each of the years in the three-year period ended December 31, 2001, have been incorporated by reference in this prospectus in reliance upon the report of KPMG LLP, independent accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

**Item 14. *Other Expenses of Issuance and Distribution.***

The following table sets forth the costs and expenses payable by the Registrant in connection with this offering, other than underwriting commissions and discounts, all of which are estimated except for the Securities and Exchange Commission filing fees.

Item	Amount
Securities and Exchange Commission registration fee	\$ 8,280
Trustee's fees and expenses	10,000
Legal fees and expenses	100,000
Accounting fees and expenses	75,000
Miscellaneous expenses	6,720
	<hr/>
Total	\$200,000
	<hr/>

**Item 15. *Indemnification of Directors and Officers.***

Under Section 145 of the General Corporation Law of the State of Delaware, we can indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). Our certificate of incorporation provides that, pursuant to Delaware law, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. This provision in the certificate of incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of nonmonetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us or our stockholders, for acts or omissions not in good faith or involving intentional misconduct or knowing violations of the law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Our bylaws provide for the indemnification of our directors to the fullest extent permitted by the Delaware General Corporation Law. Our bylaws further provide that our Board of Directors has sole discretion to indemnify our officers and other employees. We may limit the extent of such indemnification by individual contracts with our directors and executive officers, but have not done so. We are not, however, required to indemnify any director or executive officer in connection with any proceeding initiated by us and approved by a majority of our Board of Directors, that alleges (a) unlawful misappropriation of corporate assets, (b) disclosure of confidential information or (c) any other willful breach of such director or executive officer's duty to us or our stockholders. We are required to advance, prior to the final disposition of any proceeding, promptly on request, all expenses incurred by any director or executive officer in connection with that proceeding on receipt of an undertaking by or on behalf of that director or executive officer to repay those amounts if it should be determined ultimately that he or she is not entitled to be indemnified under our bylaws or otherwise.

We also have directors' and officers' liability insurance.

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### Item 16. Exhibits.

Exhibit Number	Description of Exhibit
2.1	Agreement of Reorganization and Plan of Merger (incorporated by reference to exhibit number 3.2(a) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
3.1	Certificate of Incorporation (incorporated by reference to exhibit number 3.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
3.2	Bylaws (incorporated by reference to exhibit number 3.2 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
3.2(a)	Amendment to Bylaws (incorporated by reference to exhibit number 3.2(a) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
4.1	Form of Specimen Class A Common Stock Certificate (incorporated by reference to exhibit number 4.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
4.2	Purchase Agreement, dated April 14, 2002, between the Registrant and CIBC World Markets Corp., relating to the 4.50% Convertible Subordinated Notes.
4.3	Indenture, dated April 9, 2002, between the Registrant and Wells Fargo Bank, National Association, as Trustee, relating to the 4.50% Convertible Subordinated Notes.
4.4	Form of Specimen Restricted Global Security.
4.5	Registration Rights Agreement, dated April 9, 2002, between the Registrant and CIBC World Markets Corp., relating to the 4.5% Convertible Subordinated Notes.
5.1	Opinion of Kirkpatrick & Lockhart LLP.
10.1	Amended and Restated 1998 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit number 10.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.1(a)	Amendment No. 1 to Amended and Restated 1998 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit number 4.4 of the Registrant's Registration Statement on Form S-8 (File No. 333-71114), filed with the Securities and Exchange Commission on October 5, 2001).
10.2	Amended and Restated 1998 Employee Stock Purchase Plan (incorporated by reference to exhibit number 10.1 of the Registrant's Form 10-Q for the three months ending June 30, 2000).
10.3	Employment Agreement dated June 14, 1999, between the Registrant and Robert Greenberg (incorporated by reference to exhibit number 10.3 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.3(a)	Amendment No. 1 to Employment Agreement between the Registrant and Robert Greenberg dated December 31, 1999 (incorporated by reference to exhibit number 10.3(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.4	Employment Agreement dated June 14, 1999, between the Registrant and Michael Greenberg (incorporated by reference to exhibit number 10.4 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.4(a)	Amendment to Employment Agreement between the Registrant and Michael Greenberg dated December 31, 2000 (incorporated by reference to exhibit number 10.4(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.5	Employment Agreement dated June 14, 1999, between the Registrant and David Weinberg (incorporated by reference to exhibit number 10.5 of the Registrant's Form 10-Q for the period ending June 30, 1999).

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.5(a)	Amendment No. 1 to Employment Agreement between the Registrant and David Weinberg dated December 31, 2000 (incorporated by reference to exhibit number 10.5(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.6	Indemnification Agreement dated June 7, 1999 between the Registrant and its directors and executive officers (incorporated by reference to exhibit number 10.6 of the Registrant's Form 10-K for the year ending December 31, 1999).
10.6(a)	List of Registrant's directors and executive officers who entered into Indemnification Agreement referenced in Exhibit 10.6 with the Registrant (incorporated by reference to exhibit number 10.6(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.7	Registration Rights Agreement dated June 9, 1999, between the Registrant, the Greenberg Family Trust, and Michael Greenberg (incorporated by reference to exhibit number 10.7 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.8	Tax Indemnification Agreement dated June 8, 1999, between the Registrant and certain shareholders (incorporated by reference to exhibit number 10.8 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.9	Lease Agreement, dated July 1, 1999, between the Registrant and Richard and Donna Piazza, regarding 1108-B Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.22 of the registrant's Form 10-K for the year ending December 31, 1999).
10.10	Amended and Restated Loan and Security Agreement between the Registrant and Heller Financial, Inc., dated September 4, 1998 (incorporated by reference to exhibit number 10.10 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.10(a)	Term Loan A Note, dated September 4, 1998, between the Registrant and Heller Financial, Inc. (incorporated by reference to exhibit number 10.10(a) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.10(b)	Revolving Note dated September 4, 1998, between the Registrant and Heller Financial, Inc. (incorporated by reference to exhibit number 10.10(b) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.10(c)	First Amendment to Amended and Restated Loan and Security Agreement, dated September 11, 1998 (incorporated by reference to exhibit number 10.10(c) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.10(d)	Second Amendment to Amended and Restated Loan and Security Agreement, dated December 23, 1998 (incorporated by reference to exhibit number 10.10(d) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.10(e)	Third Amendment to Amended and Restated Loan and Security Agreement dated February 1, 2000 (incorporated by reference to exhibit number 10.10(e) of the Registrant's Form 10-K for the year ending December 31, 2000).
10.10(f)	Forth Amendment to Amended and Restated Loan and Security Agreement dated June 1, 2000 (incorporated by reference to exhibit number 1010(f) of the Registrant's Form 10-K for the year ending December 31, 2000).
10.10(g)	Fifth Amendment to Amended and Restated Loan and Security Agreement dated July 11, 2001 (incorporated by reference to exhibit number 10.10(g) of the Registrant's Form 10-Q for the three months ended September 30, 2001).
10.11	Lease Agreement, dated April 15, 1998, between the Registrant and Holt/ Hawthorn and Victory Partners, regarding 228 Manhattan Beach Boulevard, Manhattan Beach, California (incorporated by reference to exhibit number 10.11 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.12	Commercial Lease Agreement, dated February 19, 1997, between the Registrant and Richard and Donna Piazza, regarding 1110 Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.12 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.13	Lease Agreement, dated June 12, 1998, between the Registrant and Richard and Donna Piazza, regarding 1112 Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.13 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.14	Lease Agreement, dated November 21, 1997, between the Registrant and The Prudential Insurance Company of America, regarding 1661 So. Vintage Avenue, Ontario, California (incorporated by reference to exhibit number 10.14 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.15	Lease Agreements, dated November 21, 1997, between the Registrant and The Prudential Insurance Company of America, regarding 1777 So. Vintage Avenue, Ontario, California (incorporated by reference to exhibit number 10.15 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.16	Commercial Lease Agreement, dated April 10, 1998, between the Registrant and Proficiency Ontario Partnership, regarding 5725 East Jurupa Street (incorporated by reference to exhibit number 10.16 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.17	Lease Agreement and Addendum, dated June 11, 1998, between the Registrant and Delores McNabb, regarding Suite 3 on the first floor of the north building, Suite 9 on the first floor of the south building at 904 Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.17 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.18	Addendum to Lease Agreement, dated September 14, 1998, between the Registrant and Delores McNabb, regarding Suites 3, 4 and 5 on the second floor of the north building at 904 Manhattan Avenue, Manhattan Beach California (incorporated by reference to exhibit number 10.18 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
10.18(a)	Addendum to Lease Agreement, dated April 15, 2000, between the Registrant and Delores McNabb, regarding Suites 7, 8 and 9 on the second floor of the south building at 904 Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.18(a) of the Registrant's Form 10-K for the year ending December 31, 2001).
10.19	Standard Offer, Agreement and Escrow Instructions, Addendum and Additional Provisions, dated October 12, 2000, between the Registrant and/or its assignees and Champagne Building Group L.P., for the purchase of property located at 1670 South Champagne Avenue, Ontario, California (incorporated by reference to exhibit number 10.19 of the Registrant's Form 10-K for the year ending December 31, 2000).
10.20	Lease Agreement, dated November 15, 1999, between the Registrant and Champagne Building Group L.P., regarding 1670 South Champagne Avenue, Ontario, California (incorporated by reference to exhibit 10.20 of the Registrant's Form 10-K for the year ending December 31, 1999).
10.21	Lease Agreement, dated November 18, 1999, between the Registrant and Pacifica California/ Apollo, LLC, regarding Suites 125, 300, and 330 at 225 South Sepulveda Boulevard, Manhattan Beach, California (incorporated by reference to exhibit 10.21 of the Registrant's Form 10-K for the year ending December 31, 1999) (incorporated by reference to exhibit number 10.21 of the Registrant's Form 10-K for the year ending December 31, 2000).

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.22	Purchase and Sale Agreement with Escrow Instructions, dated November 13, 2000, between the Registrant and Pacifica California/ Apollo, LLC, for the purchase of property located at 225 South Sepulveda Boulevard, Manhattan Beach, California (incorporated by reference to exhibit number 10.22 of the Registrant's Form 10-K for the year ending December 31, 2000).
10.22(a)	First Amendment to Purchase and Sale Agreement, dated November 29, 2000, between the Registrant and Pacifica California/ Apollo, LLC, for the purchase of property located at 225 South Sepulveda Boulevard, Manhattan Beach, California (incorporated by reference to exhibit number 10.22(a) of the Registrant's Form 10-K for the year ending December 31, 2000).
10.23	Promissory Note, dated December 27, 2000, between the Registrant and Washington Mutual Bank, FA, for the purchase of property located at 225 South Sepulveda Boulevard, Manhattan Beach, California (incorporated by reference to exhibit number 10.23 of the Registrant's Form 10-K for the year ending December 31, 2000).
10.24	Assignment and Assumption Agreement, dated December 27, 2000, between the Registrant and Pacifica California/ Apollo, LLC, regarding 225 South Sepulveda Boulevard, Manhattan Beach, California (incorporated by reference to exhibit number 10.24 of the Registrant's Form 10-K for the year ending December 31, 2000).
10.25	Loan Agreement, dated December 21, 2000, between Yale Investments, LLC, and MONY Life Insurance Company, for the purchase of property located at 1670 South Champagne Avenue, Ontario, California (incorporated by reference to exhibit number 10.25 of the Registrant's Form 10-K for the year ending December 31, 2000).
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10.27	Lease Agreement, dated April 28, 2000, between the Registrant and Manhattan Corners, LLC, regarding 1100 Highland Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.27 of the Registrant's Form 10-K for the year ending December 31, 2001).
10.28	Lease Agreement, dated April 28, 2000, between the Registrant and ProLogis California I LLC, regarding 4100 East Mission Boulevard, Ontario, California (incorporated by reference to exhibit number 10.28 of the Registrant's Form 10-K for the year ending December 31, 2001).
12	Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of KPMG LLP.
23.2	Consent of Kirkpatrick & Lockhart LLP (contained in Exhibit 5.1).
24	Power of Attorney (included on signature page).
25	Form T-1 Statement of Eligibility of Trustee under the Trust Indenture Act of 1939.

### **Item 17. Undertakings**

The undersigned Registrant hereby undertakes:

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

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

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



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offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement.

(c) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that the undertakings set forth in paragraph (a) and (b) above shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) that are incorporated by reference in this Registration Statement.

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

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

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

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

For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933 shall be deemed to be part of this Registration Statement as of the time it was declared effective. For the purpose of determining any liability under the Securities Act of 1933, each post-effective that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.



**INDEX TO EXHIBITS**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
2.1	Agreement of Reorganization and Plan of Merger (incorporated by reference to exhibit number 3.2(a) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
3.1	Certificate of Incorporation (incorporated by reference to exhibit number 3.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
3.2	Bylaws (incorporated by reference to exhibit number 3.2 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
3.2(a)	Amendment to Bylaws (incorporated by reference to exhibit number 3.2(a) of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
4.1	Form of Specimen Class A Common Stock Certificate (incorporated by reference to exhibit number 4.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on May 12, 1999).
4.2	Purchase Agreement, dated April 14, 2002, between the Registrant and CIBC World Markets Corp., relating to the 4.50% Convertible Subordinated Notes.
4.3	Indenture, dated April 9, 2002, between the Registrant and Wells Fargo Bank, National Association, as Trustee, relating to the 4.50% Convertible Subordinated Notes.
4.4	Form of Specimen Restricted Global Security.
4.5	Registration Rights Agreement, dated April 9, 2002, between the Registrant and CIBC World Markets Corp., relating to the 4.5% Convertible Subordinated Notes.
5.1	Opinion of Kirkpatrick & Lockhart LLP.
10.1	Amended and Restated 1998 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit number 10.1 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on July 29, 1998).
10.1(a)	Amendment No. 1 to Amended and Restated 1998 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit number 4.4 of the Registrant's Registration Statement on Form S-8 (File No. 333-71114), filed with the Securities and Exchange Commission on October 5, 2001).
10.2	Amended and Restated 1998 Employee Stock Purchase Plan (incorporated by reference to exhibit number 10.1 of the Registrant's Form 10-Q for the three months ending June 30, 2000).
10.3	Employment Agreement dated June 14, 1999, between the Registrant and Robert Greenberg (incorporated by reference to exhibit number 10.3 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.3(a)	Amendment No. 1 to Employment Agreement between the Registrant and Robert Greenberg dated December 31, 1999 (incorporated by reference to exhibit number 10.3(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.4	Employment Agreement dated June 14, 1999, between the Registrant and Michael Greenberg (incorporated by reference to exhibit number 10.4 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.4(a)	Amendment to Employment Agreement between the Registrant and Michael Greenberg dated December 31, 2000 (incorporated by reference to exhibit number 10.4(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.5	Employment Agreement dated June 14, 1999, between the Registrant and David Weinberg (incorporated by reference to exhibit number 10.5 of the Registrant's Form 10-Q for the period ending June 30, 1999).

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10.5(a)	Amendment No. 1 to Employment Agreement between the Registrant and David Weinberg dated December 31, 2000 (incorporated by reference to exhibit number 10.5(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.6	Indemnification Agreement dated June 7, 1999 between the Registrant and its directors and executive officers (incorporated by reference to exhibit number 10.6 of the Registrant's Form 10-K for the year ending December 31, 1999).
10.6(a)	List of Registrant's directors and executive officers who entered into Indemnification Agreement referenced in Exhibit 10.6 with the Registrant (incorporated by reference to exhibit number 10.6(a) of the Registrant's Form 10-K for the year ending December 31, 1999).
10.7	Registration Rights Agreement dated June 9, 1999, between the Registrant, the Greenberg Family Trust, and Michael Greenberg (incorporated by reference to exhibit number 10.7 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.8	Tax Indemnification Agreement dated June 8, 1999, between the Registrant and certain shareholders (incorporated by reference to exhibit number 10.8 of the Registrant's Form 10-Q for the period ending June 30, 1999).
10.9	Lease Agreement, dated July 1, 1999, between the Registrant and Richard and Donna Piazza, regarding 1108-B Manhattan Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.22 of the registrant's Form 10-K for the year ending December 31, 1999).
10.10	Amended and Restated Loan and Security Agreement between the Registrant and Heller Financial, Inc., dated September 4, 1998 (incorporated by reference to exhibit number 10.10 of the Registrant's Registration Statement on Form S-1, as amended (File No. 333-60065), filed with the Securities and Exchange Commission on April 9, 1999).
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10.27	Lease Agreement, dated April 28, 2000, between the Registrant and Manhattan Corners, LLC, regarding 1100 Highland Avenue, Manhattan Beach, California (incorporated by reference to exhibit number 10.27 of the Registrant's Form 10-K for the year ending December 31, 2001).
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23.1	Consent of KPMG LLP.
23.2	Consent of Kirkpatrick & Lockhart LLP (contained in Exhibit 5.1).
24	Power of Attorney (included on signature page).
25	Form T-1 Statement of Eligibility of Trustee under the Trust Indenture Act of 1939.

Exhibit 4.2

SKECHERS U.S.A., INC.

\$75,000,000

PRINCIPAL AMOUNT

4.50% CONVERTIBLE SUBORDINATED NOTES DUE 2007

PURCHASE AGREEMENT

APRIL 4, 2002

CIBC WORLD MARKETS CORP.

4.50% CONVERTIBLE SUBORDINATED NOTES DUE 2007

OF SKECHERS U.S.A., INC.

CIBC WORLD MARKETS CORP.

April 4, 2002

CIBC World Markets Corp.  
417 5th Avenue, 2nd Floor  
New York, New York 10016

Dear Sirs and Madams:

Skechers U.S.A., Inc., a Delaware corporation (the "COMPANY"), proposes to issue and sell to CIBC World Markets Corp. ("CIBC" or the "INITIAL PURCHASER"), an aggregate of \$75,000,000 in principal amount of its 4.50% Convertible Subordinated Notes due April 15, 2007 (the "FIRM NOTES"), subject to the terms and conditions set forth herein. The Company also proposes to issue and sell to the Initial Purchaser not more than an additional \$15,000,000 aggregate principal amount of its 4.50% Convertible Subordinated Notes due April 4, 2007 (the "ADDITIONAL NOTES"), if requested by the Initial Purchaser as provided in Section 2 hereof. The Firm Notes and the Additional Notes are herein collectively referred to as the "NOTES." The Notes are to be issued pursuant to the provisions of an indenture (the "INDENTURE"), to be dated as of the Closing Date (as hereinafter defined), between the Company, and Wells Fargo Bank, National Association., as trustee (the "TRUSTEE"), pursuant to which the Notes, as provided therein, will be convertible at the option of the holders thereof into shares of the Company's Class A common stock, \$0.001 par value per share (the "CLASS A COMMON STOCK"). The Notes and the Class A Common Stock issuable upon conversion thereof are herein collectively referred to as the "SECURITIES." The Securities and the Indenture are more fully described in the Offering Circular (as hereinafter defined). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Indenture.

1. OFFERING CIRCULAR. The Notes will be offered and sold to the Initial Purchaser pursuant to one or more exemptions from the registration requirements under the Securities Act of 1933, as amended (the "ACT"). The Company has



prepared an offering circular, dated April 4, 2002 (the "OFFERING CIRCULAR"), relating to the Notes. All references to this Offering Circular shall include the information incorporated by reference therein (the "INCORPORATED DOCUMENTS")

Upon original issuance thereof, and until such time as the same is no longer required pursuant to the Indenture, the Notes (and all securities issued in exchange therefor, in substitution thereof or upon conversion thereof) shall bear the following legend:

"THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON THE CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON THAT THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT THAT PRIOR TO SUCH TRANSFER PROVIDES TO THE TRUSTEE FOR THE NOTES A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTES (THE FORM OF THE LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THE NOTES), (4) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO SKECHERS U.S.A., INC.) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS NOTE, ANY CLASS A COMMON SHARES ISSUABLE UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON REALES AND OTHER TRANSFERS OF THIS NOTE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS NOTE AND SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF

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THIS NOTE AND ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT."

## 2. AGREEMENTS TO SELL AND PURCHASE.

(a) On the basis of the representations, warranties and covenants contained in this Purchase Agreement (this "AGREEMENT"), and subject to the terms and conditions contained herein, the Company agrees to issue and sell to the Initial Purchaser, and the Initial Purchaser agrees to purchase from the Company, all of the Firm Notes at a purchase price equal to 100% of the principal amount thereof (the "PURCHASE PRICE").

(b) On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, (i) the Company agrees to issue and sell the Additional Notes and (ii) the Initial Purchaser shall have a right, but not the obligation, to purchase the Additional Notes, from the Company at the Purchase Price. Additional Notes may be purchased solely for the purpose of covering over-allotments made in connection with the offering of the Firm Notes. The Initial Purchaser may exercise its right to purchase Additional Notes in whole or in part from time to time by giving written notice thereof to the Company at any time within 30 days after the date of this Agreement. Such notice shall specify the aggregate principal amount of Additional Notes to be

purchased pursuant to such exercise and the date for payment and delivery thereof. The date specified in any such notice shall be a business day (i) no earlier than the Closing Date, (ii) no later than ten business days after such notice has been given and (iii) no earlier than two business days after such notice has been given.

3. TERMS OF OFFERING. The Initial Purchaser has advised the Company that the Initial Purchaser will make offers (the "EXEMPT REALES") of the Notes purchased hereunder on the terms set forth in the Offering Circular, as amended or supplemented, solely to persons whom the Initial Purchaser reasonably believes to be "qualified institutional buyers" as defined in Rule 144A under the Act ("QIB'S"). The Initial Purchaser will offer the Notes to QIB'S initially at a price equal to 100% of the principal amount thereof. Such price may be changed at any time without notice.

Holders (including subsequent transferees) of the Securities will have the registration rights set forth in the registration rights agreement (the "REGISTRATION RIGHTS AGREEMENT"), to be dated the Closing Date, in substantially the form of Exhibit A hereto, for so long as such Securities constitute "RESTRICTED SECURITIES" (as defined in the Registration Rights Agreement). Pursuant to the Registration Rights Agreement, the Company will agree to file with the Securities and Exchange Commission (the "COMMISSION"), under the circumstances set forth therein, a shelf registration statement pursuant to Rule 415 under the Act (the "REGISTRATION STATEMENT") relating to the resale by certain holders of the Securities and to use all reasonable best efforts to cause such Registration Statements to be declared and remain effective and usable for the periods specified in the Registration Rights Agreement. This Agreement, the Indenture, the Notes, and the Registration Rights Agreement are hereinafter sometimes referred to collectively as the "OPERATIVE DOCUMENTS."

#### 4. DELIVERY AND PAYMENT.

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(a) Delivery of, and payment of the Purchase Price for, the Firm Notes shall be made at the offices of Latham & Watkins, 633 West Fifth Street, Suite 4000, Los Angeles, California 90071, or such other location as may be mutually acceptable. Such delivery and payment shall be made at 10:00 a.m., New York City time, on April 9, 2002 or at such other time on the same date or such other date as the Initial Purchaser and the Company shall agree in writing. The time and date of such delivery and the payment for the Firm Notes are herein called the "CLOSING DATE."

(b) Delivery of, and payment for, any Additional Notes to be purchased by the Initial Purchaser shall be made at the offices of Latham & Watkins, 633 West Fifth Street, Suite 4000, Los Angeles, California 90071 at 10:00 a.m., New York City time, on the date specified in the exercise notice given by CIBC pursuant to Section 2(b) or such other time on the same or such other date as the Initial Purchaser and the Company shall agree in writing. The time and date of delivery and payment for any Additional Notes are hereinafter referred to as an "OPTION CLOSING DATE."

(c) One or more of the Notes in definitive global form, registered in the name of Cede & Co., as nominee of the Depository Trust Company ("DTC"), having an aggregate principal amount corresponding to the aggregate principal amount of the Notes (collectively, the "GLOBAL NOTE"), shall be delivered by the Company to the Initial Purchaser (or as the Initial Purchaser directs) in each case with any transfer taxes thereon duly paid by the Company against payment by the Initial Purchaser of the Purchase Price thereof by wire transfer in same day funds to the order of the Company. The Global Note shall be made available to the Initial Purchaser for inspection not later than 9:30 a.m., New York City time, on the business day immediately preceding the Closing Date.

5. AGREEMENTS OF THE COMPANY. The Company hereby agrees with the Initial Purchaser as follows:

(a) To advise the Initial Purchaser promptly and, if requested by the Initial Purchaser, to confirm such advice in writing of (i) the issuance by any state securities commission of any stop order suspending the qualification or exemption from qualification of any Securities for offering or sale in any jurisdiction designated by the Initial Purchaser pursuant to Section 5(e) below,

or the initiation of any proceeding by any state securities commission or any other federal or state regulatory authority for such purpose and (ii) the happening of any event during the period referred to in Section 5(c) below that makes any statement of a material fact made in the Offering Circular untrue or that requires any additions to or changes in the Offering Circular in order to make the statements therein not misleading. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or order suspending the qualification or exemption of any Securities under any state securities or Blue Sky laws and, if at any time any state securities commission or other federal or state regulatory authority shall issue an order suspending the qualification or exemption of any Securities under any state securities or Blue Sky laws, the Company shall use its best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(b) To furnish the Initial Purchaser and those persons identified by the Initial Purchaser to the Company as many copies of the Offering Circular, any documents incorporated

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by reference therein, and any amendments or supplements thereto, as the Initial Purchaser may reasonably request for the time period specified in Section 5(c). Subject to the Initial Purchaser's compliance with its representations and warranties and agreements set forth in Section 7 hereof, the Company consents to the use of the Offering Circular, any documents incorporated by reference therein, and any amendments and supplements thereto required pursuant hereto, by the Initial Purchaser in connection with Exempt Resales.

(c) During such period as in the reasonable opinion of counsel for the Initial Purchaser an Offering Circular is required by law to be delivered in connection with Exempt Resales by the Initial Purchaser, (i) not to make any amendment or supplement to the Offering Circular of which the Initial Purchaser shall not previously have been advised or to which the Initial Purchaser shall reasonably object after being so advised and (ii) to prepare promptly upon the Initial Purchaser's reasonable request any amendment or supplement to the Offering Circular that may be necessary or advisable in connection with such Exempt Resales.

(d) If, during the period referred to in Section 5(c) above, any event shall occur or condition shall exist as a result of which, in the opinion of counsel to the Initial Purchaser, it becomes necessary to amend or supplement the Offering Circular in order to make the statements therein, in the light of the circumstances when the Offering Circular is delivered to a QIB, not misleading, or if, in the opinion of counsel to the Initial Purchaser, it is necessary to amend or supplement the Offering Circular to comply with any applicable law, forthwith to prepare an appropriate amendment or supplement to the Offering Circular so that the statements therein, as so amended or supplemented, will not, in the light of the circumstances when it is so delivered, be misleading, or so that the Offering Circular will comply with applicable law, and to furnish to the Initial Purchaser and such other persons as the Initial Purchaser may designate such number of copies thereof as the Initial Purchaser may reasonably request.

(e) Prior to the sale of all Notes pursuant to Exempt Resales as contemplated hereby, to cooperate with the Initial Purchaser and counsel to the Initial Purchaser in connection with the registration or qualification of the Notes for offer and sale to the Initial Purchaser and pursuant to Exempt Resales under the securities or Blue Sky laws of such jurisdictions as the Initial Purchaser may request and to continue such registration or qualification in effect so long as required for Exempt Resales and to file such consents to service of process or other documents as may be necessary in order to effect such registration or qualification; provided, however, that the Company shall not be required in connection therewith to qualify as a foreign corporation in any jurisdiction in which it is not now so qualified or to take any action that would subject it to general consent to service of process or taxation, other than as to matters and transactions relating to the Offering Circular or Exempt Resales, in any jurisdiction in which it is not now so subject.

(f) So long as the Notes are outstanding, (i) to mail and make generally available as soon as practicable after the end of each fiscal year to the record holders of the Notes a financial report of the Company and its subsidiaries on a consolidated basis (and a similar financial report of all

unconsolidated subsidiaries, if any), it being agreed that all such financial reports will include a consolidated balance sheet, a consolidated statement of operations, a consolidated statement of cash flows and a consolidated statement of stockholders' equity as of the end of and for such fiscal year, together with comparable information as of the end of and for

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the preceding year, certified by the Company's independent public accountants and (ii) to mail and make generally available as soon as practicable after the end of each quarterly period (except for the last quarterly period of each fiscal year) to such holders, a consolidated balance sheet, a consolidated statement of operations and a consolidated statement of cash flows (and similar financial reports of all unconsolidated subsidiaries, if any) as of the end of and for such period, and for the period from the beginning of such year to the close of such quarterly period, together with comparable information for the corresponding periods of the preceding year.

(g) So long as the Notes are outstanding, to furnish to the Initial Purchaser as soon as available copies of all reports or other communications furnished by the Company to its security holders or furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed and such other publicly available information concerning the Company and/or its subsidiaries as the Initial Purchaser may reasonably request.

(h) So long as any of the Notes remain outstanding and during any period in which the Company is not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT"), to make available to any holder of Securities in connection with any sale thereof and any prospective purchaser of such Securities from such holder the information ("RULE 144A INFORMATION") required by Rule 144A(d)(4) under the Act or the information ("RULE 144 INFORMATION") required by Rule 144(c)(2) under the Act, as applicable.

(i) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of the obligations of the Company under this Agreement, including: (i) the fees, disbursements and expenses of counsel to the Company and accountants of the Company in connection with the sale and delivery of the Notes to the Initial Purchaser and pursuant to Exempt Resales, and all other fees and expenses in connection with the preparation, printing, filing and distribution of the Offering Circular, any documents incorporated by reference and all amendments and supplements to any of the foregoing (including financial statements), including the mailing and delivering of copies thereof to the Initial Purchaser and persons designated by it in the quantities specified herein, (ii) all costs and expenses related to the transfer and delivery of the Notes to the Initial Purchaser and pursuant to Exempt Resales, including any transfer or other taxes payable thereon, (iii) all costs of printing or producing this Agreement, the other Operative Documents and any other agreements or documents in connection with the offering, purchase, sale or delivery of the Securities, (iv) all expenses in connection with the registration or qualification of the Securities for offer and sale under the securities or Blue Sky laws of the several states and all costs of printing or producing any preliminary and supplemental Blue Sky memoranda in connection therewith (including the filing fees and fees and disbursements of counsel for the Initial Purchaser in connection with such registration or qualification and memoranda relating thereto), (v) the cost of printing certificates representing the Securities, (vi) all expenses and listing fees in connection with the application for quotation of the Notes in The PORTAL Market of the National Association of Securities Dealers, Inc. ("PORTAL"), (vii) the fees and expenses of the Trustee and the Trustee's counsel in connection with the Indenture and the Notes, (viii) the costs and charges of any transfer agent, registrar and/or depositary (including DTC), (ix) any fees charged by rating agencies for the rating of the Notes, (x) all costs and

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expenses of the Registration Statement, as set forth in the Registration Rights Agreement, (xi) all expenses and listing fees in connection with the application

for listing the Class A Common Stock issuable upon conversion of the Notes on the New York Stock Exchange (the "NYSE") and (xii) and all other costs and expenses incident to the performance of the obligations of the Company hereunder for which a provision is not otherwise made in this Section.

(j) To use its best efforts to effect the inclusion of the Notes in PORTAL and to maintain the listing of the Notes on PORTAL for so long as the Notes are outstanding.

(k) To obtain the approval of DTC for "book-entry" transfer of the Notes, and to comply with all of its agreements set forth in the representation letters of the Company to DTC relating to the approval of the Notes by DTC for "book-entry" transfer.

(l) To cause the Class A Common Stock issuable upon conversion of the Notes to be duly included for quotation on the NYSE prior to the Closing Date, subject to notice of official issuance. The Company will ensure that such Class A Common Stock remain included for quotation on the NYSE or any other national securities exchange following the Closing Date for so long as any shares of Class A Common Stock remain registered under the Exchange Act.

(m) The Company will reserve and keep available at all times, free of preemptive rights, the shares of Class A Common Stock for the purpose of enabling the Company to satisfy its obligations to issue the Class A Common Stock upon conversion of the Notes.

(n) The Company shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Class A Common Stock (other than the issuance of Class A Common Stock upon conversion of the Notes and issuance of Class A Common Stock under the Company's equity line), the Company's Class B common stock, \$0.001 par value per share ("CLASS B COMMON STOCK" and together with the Class A Common Stock, the "COMMON STOCK") or any securities convertible into or exercisable or exchangeable for Class A Common Stock or Class B Common Stock, for a period of 90 days after the date hereof without the prior written consent of CIBC. Notwithstanding the foregoing, during such period (i) the Company may grant securities convertible into or exercisable or exchangeable for Class A Common Stock or Class B Common Stock pursuant to the Company's existing stock option, stock purchase or 401(k) plans, (ii) the Company may issue shares of Common Stock upon the conversion or exchange of a convertible or exchangeable security outstanding on the date hereof, and (iii) the Company may create and issue up to \$35,000,000 aggregate principal amount of further Notes as further described under the section of the Offering Circular entitled "Description of the Notes -- Further Issuances." The Company shall, prior to or concurrently with the execution of this Agreement, deliver an agreement executed by each of the directors and executive officers of the Company to the effect that such person will not, during the period commencing on the date such person signs such agreement and ending 30 days after the date hereof, without the prior written consent of CIBC, (i) engage in any of the transactions described in the first sentence of this paragraph (whether such shares or any such securities are now owned by such individual or are hereafter acquired) or (ii) enter into any swap

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or other arrangement that transfers to another, in whole or in part, any of the economic consequences associated with the ownership of any Common Stock (whether any such transactions described in clause (i) or (ii) is to be settled by the delivery of Class A Common Stock or Class B Common Stock or such other securities, in cash or otherwise). In addition, in such agreement each of the directors and executive officers of the Company will have agreed not to make any demand for or exercise any registration rights for a period of 30 days after the date hereof without the prior written consent of CIBC.

(o) Not to sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Act) that would be integrated with the sale of the Notes to the Initial Purchaser or pursuant to Exempt Resales in a manner that would require the registration of any such sale of the Notes under the Act.

(p) During the period of two years after the Closing Date, the

Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Securities that have been reacquired by any of them.

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

(r) Not to voluntarily claim, and to actively resist any attempts to claim, the benefit of any usury laws against the holders of any Notes.

(s) To comply with all of its agreements set forth in the Registration Rights Agreement.

(t) To use the net proceeds received by it from the sale of the Securities in the manner specified in the Offering Circular under the caption "Use of Proceeds."

(u) To use its best efforts to do and perform all things required or necessary to be done and performed under this Agreement by it prior to the Closing Date and to satisfy all conditions precedent to the delivery of the Notes.

6. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE COMPANY. As of the date hereof, the Company represents and warrants to, and agrees with, the Initial Purchaser that:

(a) The Offering Circular (including the Incorporated Documents) does not, and any supplement or amendment to it will not, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties contained in this paragraph (a) shall not apply to statements in or omissions from the Offering Circular (or any supplement or amendment thereto) based upon

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information relating to the Initial Purchaser furnished to the Company in writing by the Initial Purchaser expressly for use therein. None of the Incorporated Documents as of the time they were filed or as of the date hereof contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. No stop order preventing the use of the Offering Circular, or any amendment or supplement thereto, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Act, has been issued. The Incorporated Documents, at the time they were or hereafter are filed or last amended, as the case may be, with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act.

(b) Each of the Company and its subsidiaries has been duly incorporated, is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to carry on its business as described in the Offering Circular and to own, lease and operate its properties, and each is duly qualified and is in good standing as a foreign corporation authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the business, prospects, financial condition or results of operations of the Company and its subsidiaries, taken as a whole (a "MATERIAL ADVERSE EFFECT").

(c) All outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid, non-assessable and not subject to any preemptive or similar rights, and there are no restrictions upon

the voting or transfer of the Common Stock pursuant to the Company's charter or by-laws or other governing documents or, except as set forth herein, any agreement or other instrument to which the Company is a party or by which it may be bound. The Company has the authorized and outstanding capital stock as set forth in the Offering Circular, and there have been no changes in the outstanding capital stock of the Company since the date set forth under the heading "Capitalization" in the Offering Circular, except to the extent that certain outstanding options and warrants set forth in the Offering Circular may have been exercised.

(d) The entities listed on Schedule A hereto are the only subsidiaries, direct or indirect, of the Company. All of the outstanding shares of capital stock of each of the Company's subsidiaries have been duly authorized and validly issued and are fully paid and non-assessable, and are owned by the Company, directly or indirectly through one or more subsidiaries, free and clear of any security interest, claim, lien, encumbrance or adverse interest of any nature (each, a "LIEN").

(e) This Agreement has been duly authorized, executed and delivered by the Company.

(f) The Indenture has been duly authorized by the Company and, when duly executed and delivered by the Company and duly authorized, executed and delivered by the Trustee, will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of

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general applicability. On the Closing Date, the Indenture will conform in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the "TIA" or "TRUST INDENTURE ACT"), and the rules and regulations of the Commission applicable to an indenture which is qualified thereunder.

(g) The Notes have been duly authorized and, when duly executed, delivered and authenticated in accordance with the provisions of the Indenture and when delivered to and paid for by the Initial Purchaser in accordance with the terms of this Agreement, the Notes will be entitled to the benefits of the Indenture and will be valid and binding obligations of the Company, enforceable in accordance with their terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability. On the Closing Date, the Notes will conform as to legal matters to the description thereof contained in the Offering Circular.

(h) The Notes are convertible into Class A Common Stock in accordance with the terms of the Indenture; the shares of Class A Common Stock initially issuable upon conversion of the Notes have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion, will be validly issued, fully paid and nonassessable, will conform to the description thereof contained in the Offering Circular and will be duly authorized for listing on the NYSE, subject to notice of official issuance. The stockholders of the Company or other holders of the Company's securities have no pre-emptive or similar rights with respect to the Notes or the Class A Common Stock issuable upon conversion of the Notes. The certificates evidencing the Class A Common Stock issuable upon conversion of the Notes will be in due and proper legal form.

(i) The Registration Rights Agreement has been duly authorized by the Company and, when duly executed and delivered by the Company, and assuming the due execution and delivery by the Initial Purchaser, will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability. On the Closing Date, the Registration Rights Agreement will conform as to legal matters to the description thereof contained in the Offering Circular.



(j) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws (ii) in default in the performance of any obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to the Company and its subsidiaries, taken as a whole, to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or their respective property is bound or (iii) in violation of any franchise, license, permit, judgment, decree, order, statute, rule or regulation where the consequences of such violation would have a Material Adverse Effect.

(k) No statute, rule, regulation or order that has been enacted, adopted or issued by any governmental agency, and no injunction, restraining order or order of any nature

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by a Federal or state court of competent jurisdiction, to which either the Company or any of its subsidiaries is subject, that has been issued or is pending, (i) could interfere with or adversely affect the issuance of the Securities, or (ii) could in any manner draw into question the validity of any of the Operative Documents.

(l) The execution, delivery and performance of this Agreement and the other Operative Documents by the Company, compliance by the Company with all provisions hereof and thereof and the consummation of the transactions contemplated hereby and thereby will not (i) require any consent, approval, authorization or other order of, or qualification with, any court or governmental body or governmental agency (except such as may be required under the securities or Blue Sky laws of the various states), (ii) conflict with or constitute a breach of any of the terms or provisions of, or a default under, the charter or by-laws of the Company or any of its subsidiaries or any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to the Company and its subsidiaries, taken as a whole, (iii) violate or conflict with any applicable law or any rule, regulation, judgment, order or decree of any court or any governmental body or agency having jurisdiction over the Company, any of its subsidiaries or their respective property, (iv) result in the imposition or creation of (or the obligation to create or impose) a Lien under, any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or their respective property is bound, or (v) result in the termination, suspension or revocation of any Authorization (as defined below) of the Company or any of its subsidiaries or result in any other impairment of the rights of the holder of any such Authorization.

(m) Except as disclosed in the Offering Circular, there are no legal or governmental proceedings pending or, to the Company's knowledge, threatened to which the Company or any of its subsidiaries is or could be a party or to which any of their respective property is or could be subject that might result, singly or in the aggregate, in a Material Adverse Effect or could materially and adversely affect the ability of the Company to perform its obligations under any of the Operative Documents, or which are otherwise material in the context of the sale of the Securities.

(n) Each of the Company and its subsidiaries is in compliance in all material respects with all rules, laws and regulations relating to the use, treatment, storage and disposal of toxic substances and the protection of health or the environment ("ENVIRONMENTAL LAW") which are applicable to its business; (ii) neither the Company nor any of its subsidiaries has received any written notice from any governmental authority or third party of an asserted claim under Environmental Laws; (iii) each of the Company and its subsidiaries has received all permits, licenses and other approvals required of it under applicable Environmental Laws to conduct its business and is in compliance with all terms and conditions of any such permit, license or approval; (iv) to the Company's knowledge, no facts currently exist that will require the Company or its subsidiaries to make future material capital expenditures to comply with Environmental Laws; and (v) no property which is or has been owned, leased or occupied by the Company or its subsidiaries has been designated as a Superfund site pursuant to the Comprehensive Environmental Response, Compensation of Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. Section 9601, et seq.) or otherwise designated as a contaminated site under applicable state or local

law. Neither the Company nor any of its subsidiaries has been

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named as a "potentially responsible party" under the CERCLA. In the ordinary course of its business, the Company periodically reviews the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, in the course of which the Company identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws, or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review, the Company has reasonably concluded that such associated costs and liabilities would not, singly or in the aggregate, have a Material Adverse Effect.

(o) The Company is not, nor will it be, as a result of or after giving effect to the issuance of the Securities and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated thereby, (i) insolvent, (ii) left with an unreasonably small capital with which to engage in its existing and anticipated businesses or (iii) incurring debts beyond its ability to pay such debts as they mature. The Company is not issuing the Securities in anticipation of insolvency.

(p) Neither the Company nor any of its subsidiaries has violated any provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any provisions of the Foreign Corrupt Practices Act or the rules and regulations promulgated thereunder, except for such violations which, singly or in the aggregate, would not have a Material Adverse Effect. None of the Company, its subsidiaries or any director, officer or employee of the Company or its subsidiaries has, in the course of such person's actions for, or on behalf of, the Company or its subsidiaries, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; and none of the Company, its subsidiaries, or to the Company's knowledge, any director, officer, employee, agent or other person acting on behalf of the Company or its subsidiaries, has, in the course of such person's actions for, or on behalf of, the Company or its subsidiaries made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(q) Each of the Company and its subsidiaries has such permits, licenses, consents, exemptions, franchises, authorizations and other approvals (each, an "AUTHORIZATION") of, and has made all filings with and given all notices to, all governmental or regulatory authorities and self-regulatory organizations and all courts and other tribunals, including without limitation under any applicable Environmental Laws, as are necessary to own, lease, license and operate its respective properties and to conduct its business, except where the failure to have any such Authorization or to make any such filing or notice would not, singly or in the aggregate, have a Material Adverse Effect. Each such Authorization is valid and in full force and effect and each of the Company and its subsidiaries is in compliance with all the terms and conditions thereof and with the rules and regulations of the authorities and governing bodies having jurisdiction with respect thereto; and no event has occurred (including without limitation the receipt of any notice from any authority or governing body) that allows or, after notice or lapse of time or both, would allow, revocation, suspension or termination of any such Authorization or results or, after notice or lapse of time or both, would result in any other impairment of the rights

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of the holder of any such Authorization; and such Authorizations contain no restrictions that are burdensome to the Company or any of its subsidiaries; except where such failure to be valid and in full force and effect or to be in compliance, the occurrence of any such event or the presence of any such restriction would not, singly or in the aggregate, have a Material Adverse Effect.

(r) The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them that is material to the business of the Company and its

subsidiaries, in each case free and clear of all Liens and defects, except such as are described in the Offering Circular or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries, in each case except as described in the Offering Circular.

(s) The Company and its subsidiaries own or license, free and clear of all liens or encumbrances, or can acquire or license, free and clear of all liens and encumbrances, on reasonable terms, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets, designs and other unpatented and/or unpatentable designs, technologies, inventions and innovations and proprietary or confidential information, systems or procedures), rights to use names and likenesses, trademarks, service marks, domain names and trade names ("INTELLECTUAL PROPERTY") currently employed by them in connection with the business now operated by them or currently used in any products, advertising or other materials distributed by them, except where the failure to own or license or otherwise to be able to acquire or license, free and clear of all liens and encumbrances, such Intellectual Property would not, singly or in the aggregate, have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any Intellectual Property or rights of privacy that, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, in each case except as described in the Offering Circular.

(t) Each agreement described in the Offering Circular or the Incorporated Documents is in full force and effect and is valid and enforceable by the Company or its subsidiary, as applicable, in accordance with its terms, assuming the due authorization, execution and delivery thereof by each of the other parties thereto except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) to the extent that rights to indemnity or contribution thereunder may be limited by federal and state securities laws or the public policy underlying such laws. None of the Company, any of its subsidiaries, or to the Company's knowledge, any other party is in default in the observance or performance of any term or obligation to be performed by it under such agreement, and no event has occurred that with notice or lapse of time or both would constitute such a default, in any such case where such default or event would have Material Adverse Effect. No default exists, and no event has occurred that with notice or lapse of time or both would constitute a default, in the due performance and observance of any term, covenant or condition, by the Company or any of its subsidiaries of any other agreement or instrument to which the

Company or any of its subsidiaries is a party or by which any of them or their respective properties or business may be bound or affected where such default or event would have a Material Adverse Effect.

(u) Except as disclosed in the Offering Circular, no relationship, direct or indirect, exists between or among the Company or any of its subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries on the other hand, that would be required by the Act to be described in the Offering Circular if the Offering Circular were a prospectus included in a registration statement on Form S-1 filed with the Commission.

(v) There is no (i) significant labor practice complaint, grievance or arbitration proceeding pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries before the National Labor Relations Board or any state or local labor relations board, (ii) strike, labor dispute, slowdown or stoppage pending or threatened against the Company or any of its subsidiaries or (iii) union representation question existing with respect to the employees of the Company or any of its subsidiaries, except in the case of clauses (i), (ii) and (iii) for such actions that singly or in the aggregate, would not have a Material Adverse Effect. To the knowledge of the Company, no collective bargaining organizing activities are taking place with respect to the

Company or any of its subsidiaries.

(w) All material tax returns required to be filed by the Company and each of its subsidiaries in any jurisdiction have been filed, other than those filings being contested in good faith, and all material taxes, including withholding taxes, penalties and interest, assessments, fees and other charges due pursuant to such returns or pursuant to any assessment received by the Company or any of its subsidiaries have been paid, other than those being contested in good faith and for which adequate reserves have been provided.

(x) The accountants, KPMG LLP, that have certified the financial statements and supporting schedules included in the Offering Circular are independent public accountants with respect to the Company, as required by the Act and the Exchange Act. The historical financial statements, together with related schedules and notes, set forth in the Offering Circular comply as to form in all material respects with the requirements applicable to registration statements on Form S-1 under the Act.

(y) The historical financial statements, together with related schedules and notes forming part of the Offering Circular (and any amendment or supplement thereto), present fairly the consolidated financial position, results of operations and changes in financial position of the Company and its subsidiaries on the basis stated or incorporated by reference in the Offering Circular at the respective dates or for the respective periods to which they apply; such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and the other financial and statistical information and data set forth or incorporated by reference in the Offering Circular (and any amendment or supplement thereto) are, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company.

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(z) The Company is not and, after giving effect to the offering and sale of the Notes and the application of the net proceeds thereof as described in the Offering Circular, will not be, an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

(aa) Except as disclosed in the Offering Circular or other than has been waived, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company or to require the Company to include such securities with the Notes registered pursuant to any registration statement.

(bb) Neither the Company nor any of its subsidiaries nor any agent thereof acting on the behalf of any of them has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Notes to violate Section 7 of the Exchange Act, or any regulation promulgated thereunder, including without limitation, Regulation T (12 C.F.R. Part 220), Regulation U (12 C.F.R. Part 221) or Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System.

(cc) No "nationally recognized statistical rating organization" as such term is defined for the purpose of Rule 436(g)(2) under the Act (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering (A) the downgrading, suspension, or withdrawal of, or any review for a possible change that does not indicate the direction of the possible change in, any rating so assigned or (B) any change in the outlook for any rating of the Company or any securities of the Company.

(dd) Since the respective dates as of which information is given in the Offering Circular, other than as set forth in the Offering Circular (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), (i) there has not occurred any material adverse change in the condition, financial or otherwise, or the earnings, business, management or operations of the Company and its subsidiaries, taken as a whole, (ii) there has

not been any material adverse change in the capital stock or in the long-term debt of the Company or any of its subsidiaries, (iii) neither the Company nor any of its subsidiaries has incurred any material liability or obligation, direct or contingent except in the ordinary course of business, (iv) neither the Company nor any of its subsidiaries has sustained any material loss or interference with their respective assets, businesses or properties (whether owned or leased) from fire, explosion, earthquake, flood or other calamity, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree that would have a Material Adverse Effect; and (v) since the date of the latest consolidated balance sheet included in the Offering Circular, except as reflected therein, neither the Company nor any of its subsidiaries has (A) issued any securities other than the issuance of securities pursuant to the exercise of options granted under stock option plans or agreements existing prior to the date of the latest consolidated balance sheet included in the Offering Circular, (B) entered into any material transaction not in the ordinary course of business or (C) declared or paid any dividend or made any distribution on any shares of its capital stock or redeemed, purchased or otherwise acquired or agreed to redeem, purchase or otherwise acquire any shares of its capital stock.

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(ee) The books, records and accounts of each of the Company and each of its subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries, as applicable. Each of the Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principals and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ff) The Offering Circular, as of its date, contains all the information specified in, and meets the requirements of, Rule 144A(d)(4) under the Act.

(gg) When the Notes are issued and delivered pursuant to this Agreement, the Notes will not be of the same class (within the meaning of Rule 144A under the Act) as any security of the Company that is listed on a national securities exchange registered under Section 6 of the Exchange Act or that is quoted in a United States automated inter-dealer quotation system.

(hh) No form of general solicitation or general advertising (as defined in Regulation D under the Act) was used by the Company, or any of its representatives (other than the Initial Purchaser, as to whom the Company makes no representation) in connection with the offer and sale of the Notes contemplated hereby, including without limitation articles, notices or other communications published in any newspaper, magazine, or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. No securities of the same class as the Notes have been issued and sold by the Company within the six-month period immediately prior to the date hereof.

(ii) Except as permitted by the Securities Act, neither the Company nor any of its subsidiaries has distributed and, prior to the completion of the initial distribution of the Notes (which includes the sale by the Initial Purchaser), neither will distribute, any offering materials in connection with the offering and sale of the Notes other than the Offering Circular.

(jj) The Company has not taken, nor will it take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in, or that has constituted or that might reasonably be expected to constitute, the stabilization or manipulation of the price of the Common Stock or the Notes.

(kk) Prior to the effectiveness of any Registration Statement, the Indenture is not required to be qualified under the TIA.

(ll) No registration under the Act of the Securities is required for the sale of the Securities to the Initial Purchaser as contemplated hereby or for the Exempt Resales

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assuming the accuracy of the Initial Purchaser's representations and warranties and agreements set forth in Section 7 hereof.

(mm) Each certificate signed by any officer of the Company and delivered to the Initial Purchaser or counsel for the Initial Purchaser shall be deemed to be a representation and warranty by the Company to the Initial Purchaser as to the matters covered thereby.

(nn) The Company is subject to Section 13 or 15(d) the Exchange Act.

(oo) Except as disclosed in the Offering Circular, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Initial Purchaser for a brokerage commission, finder's fee or other like payment in connection with the sale of the Securities.

The Company acknowledges that the Initial Purchaser and, for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Section 9 hereof, counsel to the Company and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations and hereby consents to such reliance.

7. INITIAL PURCHASER'S REPRESENTATIONS AND WARRANTIES. The Initial Purchaser represents and warrants to, and agrees with, the Company:

(a) The Initial Purchaser is a QIB, with such knowledge and experience in financial and business matters as is necessary in order to evaluate the merits and risks of an investment in the Notes.

(b) The Initial Purchaser (A) is not acquiring the Securities with a view to any distribution thereof or with any present intention of offering or selling any of the Securities in a transaction that would violate the Act or the securities laws of any state of the United States or any other applicable jurisdiction and (B) will be reoffering and reselling the Securities only to QIB's in reliance on the exemption from the registration requirements of the Act provided by Rule 144A.

(c) The Initial Purchaser agrees that no form of general solicitation or general advertising (within the meaning of Regulation D under the Act) has been or will be used by such Initial Purchaser or any of its representatives in connection with the offer and sale of the Securities pursuant hereto, including without limitation articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(d) The Initial Purchaser agrees that, in connection with Exempt Resales, such Initial Purchaser will solicit offers to buy the Securities only from, and will offer to sell the Securities only to, QIB's. The Initial Purchaser further agrees that it will offer to sell the Securities only to, and will solicit offers to buy the Securities only from persons whom the Initial Purchaser reasonably believes are QIB's and that agree that (A) the Securities purchased by them may be offered, resold, pledged or otherwise transferred within the time period referred to under Rule 144(k) (taking into account the provisions of Rule 144(d) under the Act, if applicable)

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under the Act, as in effect on the date of the transfer of such Securities, only (1) to a person whom the seller reasonably believes is a QIB acquiring for its own account or for the account of a QIB in a transaction meeting the requirements of Rule 144A under the Act, (2) pursuant to an exemption from registration under the Act provided by Rule 144 thereunder (if available), (3) to an Institutional Accredited Investor that prior to such transfer, furnishes

the Trustee a signed letter containing certain representations and agreements relating to the registration and transfer of such Securities and, if requested by the Company, an opinion of counsel acceptable to the Company that such transfer is in compliance with the Act, (4) in accordance with another exemption from the registration requirements under the Act (and based upon an opinion of counsel acceptable to the Company) or (5) pursuant to an effective registration statement and, in each case, in accordance with the applicable securities laws of the United States or other jurisdictions and (B) such QIB's will deliver to each person to whom such Securities or an interest therein is transferred a notice substantially to the effect of the foregoing.

(e) The Initial Purchaser acknowledges that the Company, for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Section 9 hereof, counsel to the Company and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations and the Initial Purchaser hereby consents to such reliance.

## 8. INDEMNIFICATION.

(a) The Company agrees to indemnify and hold harmless the Initial Purchaser, its directors, its officers and each person, if any, who controls the Initial Purchaser (within the meaning of Section 15 of the Act or Section 20 of the Exchange Act), from and against any and all losses, claims, damages, liabilities and judgments (including without limitation any legal or other expenses incurred in connection with investigating or defending any matter, including any action that could give rise to any such losses, claims, damages, liabilities or judgments) caused by any untrue statement or alleged untrue statement of a material fact contained in the Offering Circular (or any amendment or supplement thereto) or any Rule 144 Information or Rule 144A Information provided by the Company to any holder or prospective purchaser of Securities pursuant to Section 5(h) or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or judgments are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to the Initial Purchaser furnished in writing to the Company by the Initial Purchaser.

(b) The Initial Purchaser agrees to indemnify and hold harmless the Company and its directors and officers and each person, if any, who controls (within the meaning of Section 15 of the Act or Section 20 of the Exchange Act) the Company to the same extent as the foregoing indemnity from the Company to the Initial Purchaser but only with reference to information relating to the Initial Purchaser furnished in writing to the Company by the Initial Purchaser expressly for use in the Offering Circular.

(c) In case any action shall be commenced involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b) (the "INDEMNIFIED PARTY"), the indemnified party shall promptly notify the person against whom such indemnity may be sought (the "INDEMNIFYING PARTY") in writing and the indemnifying party shall assume the defense of

such action, including the employment of counsel reasonably satisfactory to the indemnified party and the payment of all fees and expenses of such counsel, as they are incurred (except that in the case of any action in respect of which indemnity may be sought pursuant to both Sections 8(a) and 8(b), the Initial Purchaser shall not be required to assume the defense of such action pursuant to this Section 8(c) but may employ separate counsel and participate in the defense thereof, but the fees and expenses of such counsel, except as provided below, shall be at the expense of the Initial Purchaser). Any indemnified party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the indemnified party unless (i) the employment of such counsel shall have been specifically authorized in writing by the indemnifying party, (ii) the indemnifying party shall have failed to assume the defense of such action or employ counsel reasonably satisfactory to the indemnified party or (iii) the named parties to any such action (including any impleaded parties) include both the indemnified party and the indemnifying party, and the indemnified party shall have been advised by such counsel that there may be one or more legal defenses available to it that are different from or additional to those



available to the indemnifying party (in which case the indemnifying party shall not have the right to assume the defense of such action on behalf of the indemnified party). In any such case, the indemnifying party shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all indemnified parties, and all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by CIBC, in the case of the parties indemnified pursuant to Section 8(a), and by the Company, in the case of parties indemnified pursuant to Section 8(b). The indemnifying party shall indemnify and hold harmless the indemnified party from and against any and all losses, claims, damages, liabilities and judgments by reason of any settlement of any action (i) effected with its written consent or (ii) effected without its written consent if the settlement is entered into more than twenty business days after the indemnifying party shall have received a request from the indemnified party for reimbursement for the fees and expenses of counsel (in any case where such fees and expenses are at the expense of the indemnifying party) and, prior to the date of such settlement, the indemnifying party shall have failed to comply with such reimbursement request. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement or compromise of, or consent to the entry of judgment with respect to, any pending or threatened action in respect of which the indemnified party is or could have been a party and indemnity or contribution may be or could have been sought hereunder by the indemnified party, unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability on claims that are or could have been the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the indemnified party.

(d) To the extent the indemnification provided for in this Section 8 is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages, liabilities or judgments referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities and judgments (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the

Initial Purchaser, on the other hand, from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Initial Purchaser, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages, liabilities or judgments, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Initial Purchaser, on the other hand, shall be deemed to be in the same proportion as the total net proceeds from the offering of the Securities (after Initial Purchaser's discounts or commissions, but before deducting expenses) received by the Company, and the total discounts and commissions received by the Initial Purchaser bear to the total price to investors of the Securities, in each case as set forth on the cover page of the Offering Circular. The relative fault of the Company, on the one hand, and the Initial Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Initial Purchaser, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or judgments referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such indemnified party in connection with investigating or defending any matter, including any action,

that could have given rise to such losses, claims, damages, liabilities or judgments. Notwithstanding the provisions of this Section 8, the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the total discounts and commissions received by the Initial Purchaser exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

9. CONDITIONS OF THE INITIAL PURCHASER'S OBLIGATIONS. The obligations of the Initial Purchaser to purchase the Firm Notes under this Agreement on the Closing Date and the Additional Notes, if any, on any Option Closing Date are subject to the satisfaction of each of the following conditions.

(a) All the representations and warranties of the Company contained in this Agreement shall be true and correct on the Closing Date, or on each Option Closing Date, if any, with the same force and effect as if made on and as of the Closing Date or on each Option Closing Date, if any.

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(b) On or after the date hereof, (i) there shall not have occurred any downgrading, suspension or withdrawal of, nor shall any notice have been given of any potential or intended downgrading, suspension or withdrawal of, or of any review (or of any potential or intended review) for a possible change that does not indicate the direction of the possible change in, any rating of the Company or any securities of the Company (including without limitation the placing of any of the foregoing ratings on credit watch with negative or developing implications or under review with an uncertain direction) by any "nationally recognized statistical rating organization" as such term is defined for the purpose of Rule 436(g)(2) under the Act, (ii) there shall not have occurred any change, nor shall any notice have been given of any potential or intended change, in the outlook for any rating of the Company or any securities of the Company by any such rating organization and (iii) no such rating organization shall have given notice that it has assigned (or is considering assigning) a lower rating to the Notes than that on which the Notes were marketed.

(c) Since the respective dates as of which information is given in the Offering Circular, other than as set forth in the Offering Circular (exclusive of any amendments or supplements thereto after the date of this Agreement), (i) there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or the earnings, business, management or operations of the Company and its subsidiaries, taken as a whole, (ii) there shall not have been any change or any development involving a prospective change in the capital stock or in the long-term debt of the Company or any of its subsidiaries except in the ordinary course of business, (iii) neither the Company nor any of its subsidiaries shall have incurred any liability or obligation, direct or contingent except in the ordinary course of business, and (iv) neither the Company nor any of its subsidiaries shall have sustained any loss or interference with their respective assets, businesses or properties (whether owned or leased) from fire, explosion, earthquake, flood or other calamity, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree, the effect of which, in case of any event described in the foregoing clause (i), (ii), (iii) or (iv), in the judgment of the Initial Purchaser, is material and adverse and makes it impracticable to market the Securities on the terms and in the manner contemplated in the Offering Circular.

(d) You shall have received on the Closing Date a certificate, dated the Closing Date, and on an Option Closing Date, if any, dated such Option Closing Date, signed by the President and the Chief Financial Officer of the Company, confirming the matters set forth in Sections 6(dd), 9(a) and 9(b) and stating that the Company has complied with all the agreements and satisfied all of the conditions herein contained and required to be complied with or satisfied on or prior to the Closing Date or Option Closing Date, as the case may be.

(e) You shall have received on the Closing Date and each Option Closing Date, if any, an opinion (subject to customary qualifications, limitations and exceptions and satisfactory to you and counsel for the Initial Purchaser), dated the Closing Date or such Option Closing Date, as the case may be, of Kirkpatrick & Lockhart LLP, counsel for the Company, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation under the laws of the State of Delaware. The Company is duly qualified to transact

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business and in good standing as a foreign corporation in the States of California and New York. In rendering this opinion regarding good standing, we have relied solely on good standing certificates of the Company as of a recent date issued by each of the Delaware Secretary of State, California Secretary of State and the New York Secretary of State, and in each case have made no independent investigation or verification.

(ii) The Company has the requisite corporate power to enter into, deliver and perform its obligations under the Purchase Agreement and to issue and sell the Securities, other than those required under state and foreign Blue Sky laws as to which such counsel need not render an opinion.

(iii) The Notes have been duly authorized by the Company and, when executed and authenticated in accordance with the provisions of the Indenture, assuming due authentication thereof by the Trustee, and delivered to and paid for by the Initial Purchaser in accordance with the terms of the Purchase Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles, and will be entitled to the benefits of the Indenture.

(iv) The Incorporated Documents, on the respective dates they were filed, appeared on their face to comply in all material respects with the requirements as to form for reports on Form 10-K and Form 8-A, as the case may be, under the Exchange Act and the related rules and regulations in effect at the respective dates of their filing.

(v) The Class A Common Stock to be issued upon conversion of the Notes have been duly authorized and reserved and, when issued upon conversion of the Notes in accordance with the terms of the Notes and the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of the Class A Common Stock will not be subject to any preemptive rights arising by operation of law or under the Company's Certificate of Incorporation or Bylaws or, to such counsel's knowledge, similar rights under the documents listed in the exhibits to the Incorporated Documents.

(vi) All necessary corporate action has been duly and validly taken by the Company to authorize the execution, delivery and performance of the Purchase Agreement and the issuance and sale of the Notes and, upon conversion thereof, the Class A Common Stock. The Purchase Agreement has been duly and validly authorized, executed and delivered by the Company and the Purchase Agreement constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(vii) Neither the execution and delivery by the Company of, and the performance by the Company of its obligations under the Purchase Agreement, the Indenture, the Registration Rights Agreement and the Securities (including, without limitation, the issuance and sale by the Company of the Notes and, upon conversion thereof, the Class A Common Stock)

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will (a) give rise to a right to terminate or accelerate the due date of any payment due under, or result in the breach of any express term or provision of, or constitute a default (or any event which with notice or lapse of time, or both, would constitute a default) under, or require consent or waiver under, or result in the execution or imposition of any lien, charge, claim, security interest or encumbrance upon any properties or assets of the Company pursuant to the express terms of any indenture, mortgage, deed trust, note or other agreement or instrument to which the Company is a party or by which the Company or any of its assets or properties or businesses is bound and which is listed as an exhibit to the Incorporated Documents, (b) to such counsel's knowledge, violate any existing obligations of the Company under the express terms of any judgment, decree, or order of any court or arbitrator or governmental agency or body, which names the Company and is specifically directed to it or its properties, (c) violate any applicable statute, rule or regulation of the Federal laws of the United States of America and the laws of the States of Delaware, New York and California or (d) violate any provision of the charter or by-laws of the Company, except for such consents, waivers, approvals and authorizations which have been obtained prior to the Closing Date.

(viii) No consent, approval, authorization, license, registration, or qualification or order of any federal, Delaware, New York or California court or governmental agency or regulatory body is required for the due authorization, execution, delivery or performance by the Company of its obligations under the Purchase Agreement, the Indenture, the Registration Rights Agreement or the Securities except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities (except, other than as set forth in paragraph (xv) below, we give no opinion as to registration of the Securities under the Act and the qualification of the Indenture under the Trust Indenture Act of 1939, as amended).

(ix) To such counsel's knowledge, without investigation except where we have been engaged by the Company to give substantive attention to such action, suit or proceeding, there is no litigation or governmental proceeding or investigation, before any court or before or by any public body or board pending or threatened in writing against, or involving the assets, properties or businesses of, the Company which would have a Material Adverse Effect.

(x) Each of the Indenture and the Registration Rights Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(xi) The Company is not an "investment company" or an entity controlled by an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(xii) The statements in the Offering Circular under the caption "Description of the Notes" insofar as such statement constitutes a summary of documents referred to therein fairly summarize in all material respects such documents and matters.

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(xiii) The capital stock of the Company conforms in all material respects to the description thereof contained in the Offering Circular under the caption "Description of Share Capital."

(xiv) The statements in the Offering Circular under the caption "Certain United States Federal Income Tax Consequences," insofar as such statements constitute a summary of the United States federal tax laws referred to therein, fairly summarize the matters referred to therein in all material respects.

(xv) Assuming (i) each Initial Purchaser is a "qualified institutional buyer" within the meaning of Rule 144A of the Act and (ii) the accuracy of the representations and warranties and compliance with the agreements of the Company in Section 6(ff) of the Purchase Agreement and of the Initial Purchaser in Section 7 of the Purchase Agreement, it is not necessary in

connection with the offer, sale and delivery of the Securities to the Initial Purchaser under the Purchase Agreement or in connection with the initial resale of the Securities by the Initial Purchaser in accordance with Section 7 of the Purchase Agreement and the Offering Circular to register the Securities under the Act, or to qualify the Indenture under the Trust Indenture Act of 1939, as amended, it being understood that no opinion is expressed as to any subsequent resale of any of the Notes or the Class A Common Stock issuable upon conversion of any of the Notes.

Such counsel is not called upon to opine as to factual matters, and the character of determinations involved in the process is such that it is not passing upon and does not need to assume any responsibility for the accuracy, completeness or fairness of the information included in the Offering Circular. Such counsel may assume the correctness and completeness of the information included in the Offering Circular, and such counsel may make no independent investigation or verification of that information. Such counsel can advise, however, that in and on the basis of its review of the Offering Circular and its participation in its preparation, nothing has come to such counsel's attention that causes it to believe that the Offering Circular (including the Incorporated Documents), as of its date or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Such counsel is not called upon to express an opinion with respect to, and the preceding paragraph does not address, the financial statements and related notes and schedules, and other financial, accounting, and statistical information, included in, incorporated by reference in, or omitted from the Offering Circular, or any further amendment or supplement thereto. Such counsel is also not called upon to express any opinion with respect to any matter relating to compliance with financial covenants or financial requirements.

(f) The Initial Purchaser shall have received on the Closing Date and on each Option Closing Date, an opinion, dated the Closing Date, of Latham & Watkins, counsel for the Initial Purchaser, in form and substance reasonably satisfactory to the Initial Purchaser.

(g) The Initial Purchaser shall have received, at the time this Agreement is executed and at the Closing Date and each Option Closing Date, if any, letters dated the date hereof or the Closing Date or an Option Closing Date, as the case may be, from KPMG LLP, independent public accountants, in form and substance satisfactory to the Initial Purchaser

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containing the information and statements of the type ordinarily included in accountants' "comfort letters" with respect to the financial statements and certain financial information contained in the Offering Circular.

(h) The Notes shall have been approved by the National Association of Securities Dealers, Inc. for trading and duly listed in PORTAL.

(i) The Initial Purchaser shall have received a counterpart, conformed as executed, of the Indenture which shall have been entered into by the Company and the Trustee.

(j) The Company shall have executed the Registration Rights Agreement, and the Initial Purchaser shall have received an original copy thereof, duly executed by the Company.

(k) The Company shall not have failed at or prior to the Closing Date or each Option Closing Date, if any, as the case may be, to perform or comply with all of the agreements contained herein and required to be performed or complied with by the Company at or prior to the Closing Date or Option Closing Date, as the case may be.

10. EFFECTIVENESS OF AGREEMENT AND TERMINATION. This Agreement may be terminated at any time on or prior to the Closing Date by the Initial Purchaser by written notice to the Company if any of the following has occurred: (i) any significant attack on or significant acts of terrorism involving the United States, outbreak or escalation of hostilities excluding current hostilities in Afghanistan, declaration by the United States of a national emergency or war or

other calamity or crisis or any change or development involving a prospective change in United States or international, political, financial or economic conditions which has a material adverse effect on financial markets so as to make it, in your sole judgment, impracticable or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Offering Circular, (ii) the suspension or material limitation of trading in securities or other instruments on the New York Stock Exchange, the American Stock Exchange, the Chicago Board of Options Exchange, the Chicago Mercantile Exchange, the Chicago Board of Trade or the Nasdaq National Market or limitation on prices for securities or other instruments on any such exchange or the Nasdaq National Market, (iii) the suspension of trading of any securities of the Company on any exchange or in the over-the-counter market, (iv) the enactment, publication, decree or other promulgation of any federal or state statute, regulation, rule or order of any court or other governmental authority that in your judgment has had, or will have, a Material Adverse Effect, (v) the declaration of a banking moratorium by either federal or New York state authorities, (vi) any major disruption of settlements of securities or (vii) the taking of any action by any federal, state or local government or agency in respect of its monetary or fiscal affairs that in your judgment has a material adverse effect on the financial markets in the United States.

#### 11. MISCELLANEOUS.

(a) Notices given pursuant to any provision of this Agreement shall be addressed as follows: (i) if to the Company to Skechers U.S.A., Inc., 228 Manhattan Beach Blvd., Manhattan Beach, California 90266, Attention Philip Paccione, with a copy to Thomas J. Poletti, Kirkpatrick & Lockhart LLP, 10100 Santa Monica Blvd., 7th Floor, Los Angeles, California 90067 and (ii) if to the Initial Purchaser, c/o CIBC World Markets Corp., 417 5th

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Avenue, 2nd Floor, New York, New York 10016 Attention: \_\_\_\_\_, with a copy to J. Scott Hodgkins, Latham & Watkins, Suite 4000, Los Angeles, California 90071, in any case to such other address as the person to be notified may have requested in writing.

(b) The respective indemnities, contribution agreements, representations, warranties and other statements of the Company and the Initial Purchaser set forth in or made pursuant to this Agreement shall remain operative and in full force and effect and will survive delivery of and payment for the Securities regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of the Initial Purchaser, the officers or directors of the Initial Purchaser, any person controlling the Initial Purchaser, the Company, the officers or directors of the Company, or any person controlling the Company, (ii) acceptance of the Securities and payment for them hereunder and (iii) termination of the Agreement.

(c) If for any reason the Notes are not delivered by or on behalf of the Company as provided herein (other than as a result of any termination of this Agreement pursuant to Section 10), the Company agrees to reimburse the Initial Purchaser for all out-of-pocket expenses (including the fees and disbursements of counsel) incurred by it. Notwithstanding any termination of this Agreement, the Company shall be liable for all expenses which it has agreed to pay pursuant to Section 5(i). The Company also agrees to reimburse the Initial Purchaser and the officers, directors and each person, if any, who controls the Initial Purchaser within the meaning of Section 15 of the Act or Section 20 of the Exchange Act for any and all fees and expenses (including without limitation the fees and expenses of counsel) incurred by them in connection with enforcing their rights under this Agreement (including without limitation its rights under Section 8).

(d) Except as otherwise provided, this Agreement has been and is made solely for the benefit of and shall be binding upon the Company, the Initial Purchaser, the Initial Purchaser's directors and officers, any controlling persons referred to herein, the directors of the Company and their respective successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include a purchaser of any of the Securities from the Initial Purchaser merely because of such purchase.

(e) This Agreement shall be governed and construed in accordance with the laws of the State of New York, including without limitation, Section 5-1401 of the New York General Obligations Law.

(f) This Agreement may be signed in various counterparts, which together shall constitute one and the same instrument.

[Signature Page Follows]

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Please confirm that the foregoing correctly sets forth the agreement between the Company and the Initial Purchaser by signing in the space provided below.

Very truly yours,

SKECHERS U.S.A., INC.

By: /s/ DAVID WEINBERG

-----  
Name: David Weinberg  
Title: Chief Financial Officer

CIBC WORLD MARKETS CORP.

By: /s/ WILLIAM S. SCHREIER

-----  
Name: William S. Schreier  
Title: Managing Director

SCHEDULE A  
SUBSIDIARIES

SKECHERS ENTITIES

I. DOMESTIC

<TABLE>  
<CAPTION>

CORPORATE ENTITY	OPERATIONS	EMPLOYEES
<S>	<C>	<C>
SKECHERS USA, INC., a Delaware corporation 228 Manhattan Beach Blvd. Manhattan Beach, CA 90266	parent company of all other Skechers entities, both international & domestic	1857
SKECHERS USA, INC., II a Delaware corporation 228 Manhattan Beach Blvd. Manhattan Beach, CA 90266	Subsidiary that develops & maintains U.S. intellectual property of Skechers; includes design, production, advertising, marketing, display merchandising and licensing operations	88
SKECHERS By Mail, Inc. a Delaware corporation 228 Manhattan Beach Blvd. Manhattan Beach, CA 90266	Subsidiary that operates skechers.com internet store	none



Yale Investments, LLC, Single-asset real estate entity; owns none  
a Delaware limited liability distribution center located at 1670 S.  
corporation Champagne Ave., Ontario, CA  
228 Manhattan Beach Blvd.  
Manhattan Beach, CA 90266

Duncan Investments, LLC, Real estate entity that owns property none  
a California limited located at: 324, 340 & 356 Sepulveda Blvd.,  
liability company Manhattan Beach, CA  
228 Manhattan Beach Blvd.  
Manhattan Beach, CA 90266

</TABLE>

## II. INTERNATIONAL

<TABLE>

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COUNTRY	CORPORATE NAME/ADDRESS	ADDITIONAL LOCATIONS	OPERATIONS	EMPLOYEES
<S>	<C>	<C>	<C>	<C>
Switzerland	SKECHERS SARL 12 Rue de la Mercerie 1003 Lausanne Switzerland	None for Skechers International companies	holding company	4

</TABLE>

<Table>

<Caption>

COUNTRY	CORPORATE NAME/ADDRESS	ADDITIONAL LOCATIONS	OPERATIONS	EMPLOYEES
<S>	<C>	<C>	<C>	<C>
England	SKECHERS USA, Ltd. Katherine House 9-11 Wyllyotts Place Darkes Lane Potters Bar, Hertfordshire United Kingdom EN62JD	RETAIL: (1) retail operations 291a-291c Oxford St. London W1 R1LB. England	wholesale and	34
Germany	SKECHERS USA Deutschland GmbH Waldstrasse 74 63128 Diezenbach, Germany	RETAIL: (1) operations CentrO Mall Space B018 Neue Mitte Oberhausen 46047, Germany	wholesale & retail	19
France	SKECHERS USA France SAS 20 rue des Capucines 75002 Paris, France	RETAIL: (1) operations 16-18 Rue De Berger 75001 Paris, France	wholesale & retail	18

</Table>

SKECHERS U.S.A., INC.,  
AS ISSUER

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
AS TRUSTEE

INDENTURE

DATED AS OF APRIL 9, 2002

4.50% CONVERTIBLE SUBORDINATED NOTES DUE 2007

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INDENTURE, dated as of April 9, 2002, between Skechers U.S.A., Inc., a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 228 Manhattan Beach Boulevard, Manhattan Beach, California 90266 (herein called the "COMPANY"), and Wells Fargo Bank, National Association, as Trustee hereunder (herein called the "TRUSTEE").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 4.50% Convertible Subordinated Notes due 2007 (herein called the "SECURITIES"), of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of shares of common stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1 DEFINITIONS.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (b) all accounting terms not otherwise defined herein have the

meanings assigned to them in accordance with generally accepted accounting principles in the United States; and

(c) the words "HEREIN," "HEREOF" and "HEREUNDER" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"ACT," when used with respect to any Holder of a Security, has the meaning specified in Section 1.4.

"AFFILIATE" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"AGGREGATE CURRENT MARKET PRICE" has the meaning specified in Section 10.4(e).

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

"AUTHENTICATING AGENT" means any Person authorized pursuant to Section 5.12 to act on behalf of the Trustee to authenticate Securities.

"AVERAGE SALES PRICE PER SHARE" means, with respect to the Common Stock of the Company, for any day, (1) the average of the high and low sales price per share regular way on a national securities exchange or, (2) if the Common Stock is not listed on a national securities exchange, the average of the high and low sales price per share regular way on The Nasdaq Stock Market, or (3) if the Common Stock is not quoted on The Nasdaq Stock Market or listed or admitted to trading on any national securities exchange, the average of the high and low sales prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Company for that purpose.

"BOARD OF DIRECTORS" means either the board of directors of the Company or any duly authorized committee of that board.

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

"BUSINESS DAY," when used with respect to any Place of Payment, Place of Conversion or any other place, as the case may be, means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in such Place of Payment, Place of Conversion or other place, as the case may be, are authorized or obligated by law or executive order to close; provided, however, that a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close shall not be a Business Day for purposes of Section 9.6 or Section 10.4.

"CASH EQUIVALENTS" means (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities

of not more than six months from the date of acquisition, (2) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six

months and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of \$500 million and a Thompson Bank Watch Rating of "B" or better, (3) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) above entered into with any financial institution meeting the qualifications specified in clause (2) above, (4) commercial paper having the highest rating obtainable from Moody's Investors Service, Inc. or Standard & Poor's Ratings Services and in each case maturing within six months after the date of acquisition and (5) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1)-(4) of this definition.

"CHANGE IN CONTROL" means the occurrence at any time, after the original issuance of the Securities, of any of the following events:

(1) the acquisition by any Person (including any syndicated group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such Person to exercise more than 50% of the total voting power of all shares of capital stock of the Company entitled to vote generally in the elections of directors, other than any such acquisition by the Company, any Subsidiary, or any employee benefit plan of the Company, Robert Greenberg or a Related Party; or

(2) any Person shall succeed in having sufficient of its nominees (who are not supported by a majority of the then current Board of Directors of the Company) elected to the Board of Directors of the Company such that such nominees, when added to any existing directors remaining on the Board of Directors of the Company after such election who are Affiliates of or acting in concert with any such Person, shall constitute a majority of the Board of Directors of the Company; or

(3) any consolidation or merger of the Company with or into any other Person, or any merger of another Person with or into the Company (other than (A) a merger (i) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company's capital stock and (ii) pursuant to which holders of Common Stock immediately prior to such transaction have, directly or indirectly, 50% or more of the total voting power of all shares of capital stock or other ownership interests entitled to vote generally in the election of directors of the continuing or surviving Person immediately after such transaction and (B) any merger that is effected solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the Company or another Person); or

(4) any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's assets to another Person;

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provided, however, that a Change in Control shall not be deemed to have occurred if the Average Sales Price Per Share on any five Trading Days within (A) the period of 10 consecutive Trading Days ending immediately after the later of the date of the Change in Control or the date of the public announcement of the Change in Control (in the case of a Change in Control under clause (1) above but not clause (2) or (3) above) or (B) the period of 10 consecutive Trading Days ending immediately prior to the date of the Change in Control (in the case of a Change in Control under clause (2) or (3) above) shall, in either case, equal or exceed 105% of the Conversion Price of the Securities in effect on each such Trading Day. For the purposes of this definition, "beneficial owner," has the meaning attributed to it in Rules 13d-3 under the Exchange Act, whether or not applicable.

For the purposes of this definition, "Related Party" means (1) any parent, spouse, sibling or descendent of (a) Robert Greenberg, (b) M. Susan Greenberg or (c) any of Robert Greenberg's children or grandchildren (collectively, "Immediate Family") or (2) any trust, corporation, partnership,



estate or other entity of which the beneficiaries, stockholders, partners or owners holding a 75% or greater interest consist of Robert Greenberg and/or members of his Immediate Family; provided that, in the case of clause (2), any interest holder other than Robert Greenberg or any member of his Immediate Family shall not be deemed a Related Party.

"CODE" has the meaning specified in Section 2.1.

"COMBINED CASH AND TENDER AMOUNT" has the meaning specified in Section 10.4(e).

"COMBINED TENDER AND CASH AMOUNT" has the meaning specified in Section 10.4(f).

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

"COMMON STOCK" means the shares of the class designated as Class A common stock, par value \$0.001 per share, of the Company at the date of this Indenture or as such stock may be reconstituted from time to time. Subject to the provisions of Section 10.11, shares issuable on conversion or repurchase of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"COMPANY" means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"COMPANY NOTICE" has the meaning specified in Section 12.3(a).

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"COMPANY REQUEST" or "COMPANY ORDER" means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or a Vice President, and by its principal financial officer, Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"COMPLETION DATE" has the meaning specified in Section 10.4(f).

"CONSTITUENT PERSON" has the meaning specified in Section 10.11.

"CONVERSION AGENT" means any Person authorized by the Company to convert Securities in accordance with Article Ten. The Company has initially appointed the Trustee as its Conversion Agent.

"CONVERSION PRICE" means the amount equal to U.S. \$1,000 divided by the Conversion Rate.

"CONVERSION RATE" has the meaning specified in Section 10.1.

"CONVERSION SHARES" has the meaning specified in Section 10.4(m).

"CORPORATE TRUST OFFICE" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered (which at the date of this Indenture is located at Wells Fargo Corporate Trust Services, E2818-176 MAC, 707 Wilshire Blvd., 17th Floor, Los Angeles, California 90017, Attn: Robert Schneider (Skechers U.S.A., Inc.)).

"CORPORATION" means a corporation, company, association, joint-stock

company or business trust.

"CREDIT FACILITY" means that certain Amended and Restated Loan and Security Agreement, dated as of September 4, 1998, as amended, supplemented or restated from time to time, between the Company and The CIT Group/Commercial Services, Inc., as successor agent and lender.

"DEFAULTED INTEREST" has the meaning specified in Section 2.8.

"DEPOSITARY" means, with respect to any Registered Securities, a clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as Depositary for such Registered Securities (or any successor securities clearing agency so registered).

"DESIGNATED SENIOR DEBT" means (i) any indebtedness outstanding under the Credit Facility, and (2) the Company's obligations under any particular Senior Debt in which the instrument creating or evidencing the same, or the assumption or guarantee thereof, or related agreements or documents to which the Company is a party, expressly provides that such indebtedness shall be "Designated Senior Debt" for purposes of this Indenture (provided that

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such instrument, agreement or other document may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt).

"DISTRIBUTION DATE" has the meaning specified in Section 10.4(m).

"DOLLAR" or "U.S.\$" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"DTC" means The Depository Trust Company, a New York corporation.

"EVENT OF DEFAULT" has the meaning specified in Section 4.1.

"EXCHANGE ACT" means the United States Securities Exchange Act of 1934 (or any successor statute), as amended from time to time.

"GLOBAL SECURITY" means a Registered Security that is registered in the Security Register in the name of a Depositary or a nominee thereof.

"HOLDER" means the Person in whose name the Security is registered in the Security Register.

"INDENTURE" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, 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 this instrument and any such supplemental indenture, respectively.

"INITIAL PURCHASER" means CIBC World Markets Corp.

"INTEREST PAYMENT DATE" means the Stated Maturity of an installment of interest on the Securities.

"LIQUIDATED DAMAGES" has the meaning specified in the Registration Rights Agreement.

"MATURITY," when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, exercise of the repurchase right set forth in Article Twelve or otherwise.

"MEMBER" means any member of, or participant in, the Depositary.

"NON-ELECTING SHARE" has the meaning specified in Section 10.11.

"NOTICE OF DEFAULT" has the meaning specified in Section 4.1.

"OFFICERS' CERTIFICATE" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President and

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by the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

"OPINION OF COUNSEL" means a written opinion of counsel, who may be counsel for or employed by the Company and who shall be acceptable to the Trustee.

"OUTSTANDING," when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

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

(2) Securities for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (if other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities (provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made); and

(3) Securities that have been paid pursuant to Section 2.7 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"PAYING AGENT" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company and, except as otherwise specifically set forth herein, such term shall include the Company if it shall act as its own Paying Agent. The Company has initially appointed the Trustee as its Paying Agent.

"PERSON" means any individual, corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

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"PLACE OF CONVERSION" has the meaning specified in Section 2.2.

"PLACE OF PAYMENT" has the meaning specified in Section 2.2.

"PREDECESSOR SECURITY" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.7 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"PURCHASE AGREEMENT" means the Purchase Agreement, dated as of April 4, 2002, between the Company and the Initial Purchaser, as such agreement may be amended from time to time.

"PURCHASED SHARES" has the meaning specified in Section 10.4(f).

"PURCHASERS" has the meaning specified in Section 9.9.

"RECORD DATE" means any Regular Record Date or Special Record Date.

"RECORD DATE PERIOD" means the period from the close of business of any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date.

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

"REDEMPTION PRICE," when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"REGISTERED SECURITIES" has the meaning specified in Section 2.1.

"REGISTRABLE SECURITIES" has the meaning specified in the Registration Rights Agreement.

"REGISTRATION DEFAULT" has the meaning specified in the Registration Rights Agreement.

"REGISTRATION RIGHTS AGREEMENT" means the Registration Rights Agreement, dated the date hereof, by and among the Company and the Initial Purchaser.

"REGULAR RECORD DATE" for interest payable in respect of any Registered Security on any Interest Payment Date means the April 1 and the October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"REPRESENTATIVE" means (1) the indenture trustee or other trustee, agent or representative for any Designated Senior Debt or (2) with respect to Designated Senior Debt that does not have any such trustee, agent or other representative, (A) in the case of such Designated

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Senior Debt issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Designated Senior Debt, any holder or owner of such Designated Senior Debt acting with the consent of the required Persons necessary to bind such holders or owners of such Designated Senior Debt and (B) in the case of all other such Designated Senior Debt, the holder or owner of such Designated Senior Debt.

"REPURCHASE DATE" has the meaning specified in Section 12.1.

"REPURCHASE PRICE" has the meaning specified in Section 12.1.

"RESPONSIBLE OFFICER," when used with respect to the Trustee, means any officer within the Corporate Trust Office, including without limitation any vice president, assistant vice president, assistant treasurer, corporate trust officer or other employee of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also

means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge and familiarity with the particular subject.

"RESTRICTED GLOBAL SECURITY" has the meaning specified in Section 2.1.

"RESTRICTED SECURITIES LEGEND" means, collectively, the legends substantially in the forms of the legends required in the form of Security attached hereto as Exhibit A to be placed upon each Security.

"RIGHTS PLAN" has the meaning specified in Section 10.4(d).

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

"RULE 144A INFORMATION" has the meaning specified in Section 8.6.

"SECURITIES" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"SECURITIES ACT" means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

"SECURITY REGISTER" and "SECURITY REGISTRAR" have the respective meanings specified in Section 2.6.

"SENIOR DEBT" means the principal of (and premium, if any) and interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) on, and rent payable on or in connection with, and all fees, costs, claims, expenses and other amounts payable in connection with, the following, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred or assumed: (1) all the Company's indebtedness evidenced by a credit or loan agreement, note, bond, debenture, or other similar instrument whether or not the recourse of the lender is to all of the Company's assets or only to a portion, (2) all of the

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Company's indebtedness, obligations and other liabilities, contingent or otherwise, for borrowed money, including, without limitation, overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements and any loans or advances from banks, whether or not evidenced by notes or similar instruments, or bonds, debentures, notes or similar instruments, whether or not the recourse of the lender is to all of the Company's assets or only to a portion thereof, (3) all of the Company's obligations as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles, (4) all of the Company's obligations as lessee under leases for facilities, equipment or other assets entered into for financing purposes, whether or not capitalized, (5) all of the Company's obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property or improvements, or any personal property included as part of any such lease, which provides that the Company is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a residual value of leased property to the lessor and all of the Company's obligations under such lease or related document to purchase or cause a third party to purchase the leased property, whether or not such lease transaction is characterized as an operating lease or capitalized lease in accordance with generally accepted accounting principles, (6) all of the Company's obligations under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements, (7) all of the Company's obligations with respect to letters of credit, bank guarantees, bankers' acceptances and similar facilities, including related reimbursement obligations, (8) all of the Company's obligations issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business), (9) all of the Company's obligations of the type referred to in clauses (1) through (8) above of another Person and all dividends of another Person, the payment of which, in either case, the Company has assumed or

guaranteed or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise or which is secured by a lien on the Company's property and (10) renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for, any such indebtedness or obligation described in clauses (1) through (9) of this definition; provided, however, that Senior Debt shall not include the Securities, any liability for federal, state, local or other taxes owed or owing by the Company or any indebtedness or obligation if the terms of such indebtedness or obligation (or the terms of the instrument under which such indebtedness or obligation is issued) expressly provides that such indebtedness or obligation is not superior in right of payment to the Securities; and provided, further, that Senior Debt shall not include accounts payable or other accrued liabilities or obligations incurred in the ordinary course of business in connection with the obtaining of materials or services and any indebtedness or obligation that the Company may owe to any direct or indirect Subsidiary.

"SHELF REGISTRATION STATEMENT" has the meaning specified in the Registration Rights Agreement.

"SIGNIFICANT SUBSIDIARY" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

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"SPECIAL RECORD DATE" for the payment of any Defaulted Interest means a date fixed by the Company pursuant to Section 2.8.

"STATED MATURITY," when used with respect to any Security or any installment of interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"SUBSIDIARY" means a corporation, or limited liability company, more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock or other similar interests in the corporation that ordinarily has or have voting power for the election of directors or Persons performing similar functions, whether at all times or only so long as no senior class of stock or other interests has or have such voting power by reason of any contingency.

"SUCCESSOR SECURITY" of any particular Security means every Security issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.7 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"TRADING DAYS" means (1) if the Common Stock is listed or admitted for trading on any national securities exchange, days on which such national securities exchange is open for business; (2) if the Common Stock is quoted on The Nasdaq Stock Market or any other system of automated dissemination of quotations of securities prices, days on which trades may be effected through such system; or (3) if the Common Stock is not listed or admitted for trading on any national securities exchange or quoted on The Nasdaq Stock Market or any other system of automated dissemination of quotation of securities prices, days on which the Common Stock is traded regular way in the over-the-counter market and for which a closing bid and a closing asked price for the Common Stock are available.

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"TRUSTEE" means the Person named as the "Trustee" in the first

paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"UNITED STATES" means the United States of America (including the several States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its "possessions" including Puerto Rico, the United States Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

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

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#### SECTION 1.2 COMPLIANCE CERTIFICATES AND OPINIONS.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and, if required by the Trust Indenture Act, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

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

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

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with; provided, however, with respect to matters of fact, an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

#### SECTION 1.3 FORM OF DOCUMENTS DELIVERED TO THE TRUSTEE.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

#### SECTION 1.4 ACTS OF HOLDERS OF SECURITIES.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or proxy duly appointed in writing by such Holders. Such action shall become effective when such instrument or instruments is delivered to the Trustee and, where it is hereby expressly required, to the Company. The Trustee shall promptly deliver to the Company copies of all such instruments delivered to the Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "ACT" of the Holders of Securities signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 5.1) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section 1.4.

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

(c) The principal amount and serial number of any Registered Security held by any Person, and the date of his holding the same, shall be proved by the Security Register.

(d) The fact and date of execution of any such instrument or writing and the authority of the Person executing the same may also be proved in any other manner that the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.4.

(e) The Company may set any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted by this Indenture to be given or taken by Holders. Promptly and in any case not later than ten days after setting a record date, the Company shall notify the Trustee and the Holders of such record date. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the thirtieth day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 13.1) prior to such first solicitation or vote, as the case may be. With regard to any record date, the Holders on such date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to give or take, or vote on, the relevant action, whether or not such Holders remain Holders after such record date.

Notwithstanding the foregoing, the Company shall not set a record date for, and the provisions of this paragraph shall not apply with respect to, any notice, declaration or direction referred to in the next paragraph.

Upon receipt by the Trustee from any Holder of (1) any notice of default or breach referred to in Section 4.1(d), if such default or breach has occurred and is continuing and the Trustee shall not have given such a notice to the Company, (2) any declaration of acceleration referred to in Section 4.2, if



an Event of Default has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, or (3) any direction referred to in Section 4.12, if the Trustee shall not have taken the action specified in such direction, then, with respect to clauses (2) and (3), a record date shall automatically and without any action by the Company or the Trustee be set for determining the Holders entitled to join in such declaration or direction, which record date shall be the close of business on the tenth day (or, if such day is not a Business Day, the next succeeding Business Day) following the day on which the Trustee receives such declaration or direction, and, with respect to clause (1), the Trustee may set any day as a record date for the purpose of determining the Holders entitled to join in such notice of default. Promptly after such receipt by the Trustee of any such declaration or direction referred to in clause (2) or (3), and promptly after setting any record date with respect to clause (1), and as soon as practicable thereafter, the Trustee shall notify the Company and the Holders of any such record date so fixed. The Holders on such record date (or their duly appointed agents or proxies), and only such Persons, shall be entitled to join in such notice, declaration or direction, whether or not such Holders remain Holders after such record date; provided, however, that, unless such notice, declaration or direction shall have become effective by virtue of Holders of the requisite principal amount of Securities on such record date (or their duly appointed agents or proxies) having joined therein on or prior to the ninetieth day after such record date, such notice, declaration or direction shall automatically and without any action by any Person be cancelled and of no further effect. Nothing in this paragraph shall be construed to prevent a Holder (or a duly appointed agent or proxy thereof) from giving, before or after the expiration of such 90-day period, a notice, declaration or direction contrary to or different from, or, after the expiration of such period, identical to, the notice, declaration or direction to which such record date relates, in which event a new record date in respect thereof shall be set pursuant to this paragraph. In addition, nothing in this paragraph shall be construed to render ineffective any notice, declaration or direction of the type referred to in this paragraph given at any time to the Trustee and the Company by Holders (or their duly appointed agents or proxies) of the requisite principal amount of Securities on the date such notice, declaration or direction is so given.

(f) Except as provided in Sections 4.2 and 4.13, any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

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#### SECTION 1.5 NOTICES, ETC., TO TRUSTEE AND COMPANY.

Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of Holders of Securities or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder of Securities or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee and received at the Corporate Trust Office, Attention: Corporate Trust Department, and shall be deemed given when received,

(b) the Company by the Trustee or by any Holder of Securities shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing, mailed, first-class postage prepaid, or telecopied and confirmed by mail, first-class postage prepaid, or delivered by hand or overnight courier, addressed to the Company at 228 Manhattan Beach Boulevard, Manhattan Beach, California 90266, Attention: Philip Paccione (telecopied no.: (310) 798-7961) or at any other address previously furnished in writing to the Trustee by the Company, and shall be deemed given when received.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official

language of the country of publication.

#### SECTION 1.6 NOTICE TO HOLDERS OF SECURITIES; WAIVER.

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Securities of any event, such notice shall be sufficiently given to Holders if in writing and mailed, first-class postage prepaid, to each Holder of a Security affected by such event, at the address of such Holder as it appears in the Security Register, not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

Neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Registered Securities as shall be made with the approval of the Trustee, which approval shall not be unreasonably withheld or delayed, shall constitute a sufficient notification to such Holders for every purpose hereunder.

Such notice shall be deemed to have been given when such notice is mailed.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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#### SECTION 1.7 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 1.8 SUCCESSORS AND ASSIGNS.

All covenants and agreements in this Indenture by the Company and by the Trustee shall bind its successors and assigns, whether so expressed or not.

#### SECTION 1.9 SEPARABILITY CLAUSE.

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

#### SECTION 1.10 BENEFITS OF INDENTURE.

Except as provided in the next sentence, nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture. The provisions of Article Eleven are intended to be for the benefit of, and shall be enforceable directly by, the holders of Senior Debt.

#### SECTION 1.11 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, THE UNITED STATES OF AMERICA, INCLUDING, WITHOUT LIMITATION, THE NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401.

#### SECTION 1.12 LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date, Repurchase Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert his Security shall not be a Business

Day at a Place of Payment or Place of Conversion, as the case may be, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal of, premium, if any, or interest on, or the payment of the Repurchase Price (whether the same is payable in cash or in shares of Common Stock) with respect to, or delivery for conversion of, such Security need not be made at such Place of Payment or Place of Conversion, as the case may be, on or by such day, but may be made on or by the next succeeding Business Day at such Place of Payment or Place of Conversion, as the case may be, with the same force and effect as if made on the Interest Payment Date, Redemption Date or Repurchase Date, or at the Stated Maturity or by such last day for conversion; provided, however, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repurchase Date, Stated Maturity or last day for conversion, as the case may be.

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#### SECTION 1.13 CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be. Until such time as this Indenture shall be qualified under the Trust Indenture Act, this Indenture, the Company and the Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Indenture were so qualified on the date hereof.

#### SECTION 1.14 COUNTERPARTS.

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

### ARTICLE TWO

#### THE SECURITIES

##### SECTION 2.1 FORM GENERALLY.

The Securities and the Trustee's Certificate of Authentication shall be in substantially the form set forth in Exhibit A hereto, which Exhibit is a part of this Indenture, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this 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 rules of any securities exchange or the Internal Revenue Code of 1986, as amended, and regulations thereunder (the "CODE"), or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. All Securities shall be issued in registered form, as opposed to bearer form, and shall sometimes be referred to as the "REGISTERED SECURITIES."

The Securities shall be printed, lithographed, typewritten or engraved or produced by any combination of these methods on steel engraved borders, if so required by any securities exchange upon which the Securities may be listed, or may be produced in any other manner permitted by the rules of any such securities exchange, or, if the Securities are not listed on a securities exchange, in any other manner approved by the Company, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

Upon their original issuance, Securities shall be issued in the form of one or more Global Securities without interest coupons and shall be registered in the name of DTC, as Depositary, or its nominee and deposited with the Trustee, as custodian for DTC, for credit by DTC to the respective accounts of beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Such Global Security, together with its Successor

Securities that are Global Securities, are collectively herein called the "RESTRICTED GLOBAL SECURITY."

#### SECTION 2.2 TITLE AND TERMS.

The aggregate principal amount of Securities that may be authenticated and delivered from time to time under this Indenture is limited to U.S. \$110,000,000 (or such greater amount necessary to reflect exercise of the Initial Purchaser's over-allotment option in compliance with the Purchase Agreement, but not in excess of U.S. \$125,000,000), except for Securities authenticated and delivered in exchange for, or in lieu of, other Securities pursuant to Section 2.5, 2.6, 2.7, 7.5, 9.8, 10.2 or 12.3(e).

The Securities shall be known and designated as the "4.50% Convertible Subordinated Notes due 2007" of the Company. Their Stated Maturity shall be April 15, 2007 and they shall bear interest on their principal amount from April 9, 2002, payable semiannually in arrears on April 15 and October 15 in each year, commencing October 15, 2002, at the rate of 4.50% per annum until the principal thereof is due and at the rate then in effect on any overdue principal and, to the extent permitted by law, on any overdue interest; provided, however, that payments shall only be made on Business Days as provided in Section 1.12.

The principal of, premium, if any, and interest on the Securities shall be payable as provided in the form of Securities attached hereto as Exhibit A, and the Repurchase Price, whether payable in cash or in shares of Common Stock, shall be payable at such places as are identified in the Company Notice given pursuant to Section 12.3 (any city in which any Paying Agent is located being herein called a "PLACE OF PAYMENT").

The Registrable Securities are entitled to the benefits of a Registration Rights Agreement as provided by the form of Securities attached hereto as Exhibit A. The Securities are entitled to the payment of Liquidated Damages as provided in the Registration Rights Agreement.

The Securities shall be redeemable at the option of the Company, as provided in Article Nine and in the form of Securities attached hereto as Exhibit A.

The Securities shall be convertible as provided in Article Ten (any city in which any Conversion Agent is located being herein called a "PLACE OF CONVERSION").

The Securities shall be subordinated in right of payment to Senior Debt of the Company as provided in Article Eleven.

The Securities shall be subject to repurchase by the Company at the option of the Holders as provided in Article Twelve.

#### SECTION 2.3 DENOMINATIONS.

The Securities shall be issuable only in registered form, without coupons, in denominations of U.S.\$1,000 and integral multiples thereof.

#### SECTION 2.4 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President, one of its Vice Presidents, its Chief Financial Officer, its Treasurer or its Controller and attested by its Secretary or one of its Assistant Secretaries. Any such signature may be manual or facsimile.

Securities bearing the manual or facsimile signature of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not

hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee or to its order for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and make available for delivery such Securities as provided in this Indenture and not otherwise.

Each Security shall be dated the date of its authentication.

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

## SECTION 2.5 GLOBAL SECURITIES; TEMPORARY SECURITIES.

### (a) GLOBAL SECURITIES

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depository for such Global Security or a nominee thereof unless (A) such Depository (i) has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or (ii) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security.

(3) If any Global Security is to be exchanged for other Securities or cancelled in whole, it shall be surrendered by or on behalf of the Depository or its nominee to the

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Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article Two. If any Global Security is to be exchanged for other Securities or cancelled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 2.6, then either (A) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article Two, or (B) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or cancelled or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 2.6(c) and as otherwise provided in this Article Two, authenticate and make available for delivery any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depository or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are

not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depository or its authorized representative which is given or made pursuant to this Article Two.

(4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article Two or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof, in which case such Registered Security shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(5) The Depository or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Registered Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members, and such owners of beneficial interests in a Global Security shall not be considered the owners or holders thereof.

#### (b) TEMPORARY SECURITIES

Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and make available for delivery, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Registered Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and

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other variations as the officers executing such Registered Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 8.2, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

#### SECTION 2.6 REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE; RESTRICTIONS ON TRANSFER.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 8.2 being herein sometimes collectively referred to as the "SECURITY REGISTER") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Trustee is hereby appointed "SECURITY REGISTRAR" for the purpose of registering Registered Securities and transfers and exchanges of Registered Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 8.2 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this

Indenture.

At the option of the Holder, and subject to the other provisions of this Section 2.6, Securities may be exchanged for other Securities of any authorized denomination and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any such office or agency. Whenever any Securities are so surrendered for exchange, and subject to the other provisions of this Section 2.6, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities the Holder making the exchange is entitled to receive. Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Security Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, subject to the other provisions of this Section 2.6, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

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No service charge shall be made for any registration of transfer or exchange of Securities except as provided in Section 2.7, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 2.5, 7.5, 9.8, 10.2 or 12.3(e) (other than where the shares of Common Stock are to be issued or delivered in a name other than that of the Holder of the Security) not involving any transfer and other than any stamp and other duties, if any, that may be imposed in connection with any such transfer or exchange by the United States or any political subdivision thereof or therein, which shall be paid by the Company.

In the event of a redemption of the Securities, the Company shall not be required (1) to register the transfer of or exchange Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption or (2) to register the transfer of or exchange any Security, or portion thereof, called for redemption.

(b) RESTRICTED SECURITIES LEGENDS. All Securities shall bear the applicable Restricted Securities Legend subject to the following:

(1) subject to the following clauses of this Section 2.6(b), a Security or any portion thereof that is exchanged, upon transfer or otherwise, for a Global Security or any portion thereof shall bear the Restricted Securities Legend borne by such Global Security while represented thereby;

(2) subject to the following clauses of this Section 2.6(b), a new Security that is not a Global Security and is issued in exchange for another Security (including a Global Security) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Securities Legend borne by such other Security;

(3) any Securities that are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act (including the Shelf Registration Statement), together with their Successor Securities, shall not bear a Restricted Securities Legend; the Company shall inform the Trustee in writing of the effective date of any such registration statement registering the Securities under the Securities Act and shall notify the Trustee at any time when prospectuses may not be delivered with respect to Securities to be sold pursuant to such registration statement. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned registration statement;

(4) at any time after the Securities may be freely transferred without registration under the Securities Act or without being subject

to transfer restrictions pursuant to the Securities Act, a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof that bears such a legend if the Trustee has received a certificate regarding the unrestricted nature of the Securities, satisfactory to the Trustee and duly executed by the Holder of such legended Security or his attorney duly authorized in writing, and after such date and receipt of such certificate, the Trustee shall

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authenticate and make available for delivery such a new Security in exchange for or in lieu of such other Security as provided in this Article Two;

(5) a new Security that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof that bears such a legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the direction of the Company, shall authenticate and make available for delivery such a new Security as provided in this Article Two; and

(6) notwithstanding the foregoing provisions of this Section 2.6(b), a Successor Security of a Security that does not bear a particular form of Restricted Securities Legend shall not bear such form of legend unless the Company has reasonable cause to believe that such Successor Security is a "restricted security" within the meaning of Rule 144, in which case the Trustee, at the direction of the Company, shall authenticate and make available for delivery a new Security bearing a Restricted Securities Legend in exchange for such Successor Security as provided in this Article Two.

(c) Neither the Trustee, the Paying Agent nor any of their agents shall (1) have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (2) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

#### SECTION 2.7 MUTILATED, DESTROYED, LOST OR STOLEN SECURITIES.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Company and to the Trustee:

(a) evidence to their satisfaction of the destruction, loss or theft of any Security, and

(b) such security or indemnity as may be satisfactory to the Company and the Trustee to save each of them and any agent of either of them harmless,

then, in the absence of actual notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, but subject to any conversion

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rights, may, instead of issuing a new Security, pay such Security, upon satisfaction of the conditions set forth in the preceding paragraph.



Upon the issuance of any new Security under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto (other than any stamp and other duties, if any, that may be imposed in connection therewith by the United States or any political subdivision thereof or therein, which shall be paid by the Company) and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

#### SECTION 2.8 PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date ("DEFAULTED INTEREST") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security, the date of the proposed payment and the Special Record Date, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause. The Special Record Date for the payment of such Defaulted Interest shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 15 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such

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Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at such Holder's address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

Subject to the foregoing provisions of this Section 2.8 and Section

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

Interest on any Security that is converted in accordance with Section 10.2 during a Record Date Period shall be payable in accordance with the provisions of Section 10.2.

#### SECTION 2.9 PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 2.8) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

#### SECTION 2.10 CANCELLATION.

All Securities surrendered for payment, redemption, repurchase, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered to the Trustee shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.10. The Trustee shall dispose of all cancelled Securities in accordance with applicable law and its customary practices in effect from time to time.

#### SECTION 2.11 COMPUTATION OF INTEREST.

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

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#### SECTION 2.12 CUSIP NUMBERS.

The Company in issuing Securities may use "CUSIP" numbers (if then generally in use) in addition to serial numbers; the Trustee shall use such CUSIP numbers in addition to serial numbers in notices of redemption and repurchase as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such CUSIP numbers either as printed on the Securities or as contained in any notice of a redemption or repurchase and that reliance may be placed only on the serial or other identification numbers printed on the Securities, and any such redemption or repurchase shall not be affected by any defect in or omission of such CUSIP numbers. The Company shall promptly notify the Trustee in writing of any change in any such CUSIP number.

### ARTICLE THREE

#### SATISFACTION AND DISCHARGE

##### SECTION 3.1 SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of conversion, or registration of transfer or exchange, or replacement of Securities herein expressly provided for and any right to receive Liquidated Damages as provided in the form of Securities attached hereto as Exhibit A and the Company's obligations to the Trustee pursuant to Section 5.7), and the Trustee, at the expense of the Company, shall execute proper instruments in form and substance satisfactory to the Trustee acknowledging satisfaction and discharge of this Indenture, when

(a) either

(1) all Securities theretofore authenticated and delivered (other than (A) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.7 and (B) Securities

for whose payment money has theretofore been irrevocably deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 8.3) have been delivered to the Trustee for cancellation; or

(2) all such Securities not theretofore delivered to the Trustee or its agent for cancellation (other than Securities referred to in clauses (A) and (B) of clause (a)(1) above)

(i) have become due and payable, or

(ii) will have become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

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and the Company, in the case of clause (i), (ii) or (iii) above, has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds (immediately available to the Holders in the case of clause (i) above) an amount sufficient to pay and discharge the entire principal, premium, if any, interest and Liquidated Damages, if any, on such Securities not theretofore delivered to the Trustee for cancellation, to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 5.7, the obligations of the Company to any Authenticating Agent under Section 5.12, the obligation of the Company to pay Liquidated Damages, if money shall have been deposited with the Trustee pursuant to clause (a)(2) of this Section 3.1, the obligations of the Trustee under Section 3.2 and the last paragraph of Section 8.3, and the obligations of the Company and the Trustee under Section 2.6 and Article Ten shall survive. Funds held in trust pursuant to this Section 3.1 are not subject to the provisions of Article Eleven.

In the event that the Company is required to pay Liquidated Damages to the Holders pursuant to the Registration Rights Agreement, the Company will provide written notice ("Liquidated Damages Notice") to the Trustee of its obligation to pay Liquidated Damages no later than 15 days prior to the proposed payment date for the Liquidated Damages, and the Liquidated Damages Notice shall set forth the amount of Liquidated Damages to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the Liquidated Damages or with respect to the nature, extent or calculation of the amount of Liquidated Damages when made, or with respect to the method employed in such calculation of the Liquidated Damages. Unless the Trustee receives a Liquidated Damages Notice from the Company within the time period specified above or otherwise from a Holder of the Securities, the Trustee is entitled to assume that no Liquidated Damages are due and payable.

#### SECTION 3.2 APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of Section 8.3, all money deposited with the Trustee pursuant to Section 3.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Persons entitled thereto, of the principal, premium, if any, Liquidated Damages, if any, and interest for whose payment such money has been deposited with the Trustee.

All moneys deposited with the Trustee pursuant to Section 3.1 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request.

#### ARTICLE FOUR

##### REMEDIES

###### SECTION 4.1 EVENTS OF DEFAULT.

"EVENT OF DEFAULT," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article Eleven or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of the principal of or premium, if any, on any Security at its Maturity, whether or not the such payment is prohibited by the subordination provisions of this Indenture; or

(b) default in the payment of any interest if any (including Liquidated Damages, if any), upon any Security when it becomes due and payable, and continuance of such default or breach for a period of 30 days, whether or not such payment is prohibited by the subordination provisions of this Indenture; or

(c) failure by the Company to give the Company Notice in accordance with Section 12.3, whether or not such notice is prohibited by the subordination provisions of this Indenture; or

(d) default in the performance, or breach, of any covenant of the Company in this Indenture (other than a covenant a default in the performance or breach of which is specifically dealt with elsewhere in this Section 4.1), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "NOTICE OF DEFAULT" hereunder; or

(e) default in the payment by the end of any applicable grace period, if any, after maturity of the principal of any indebtedness under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company or any Significant Subsidiary with a principal amount then outstanding in excess of U.S. \$10,000,000, whether such indebtedness now exists or shall hereafter be created, if the indebtedness is not discharged, or if such indebtedness has been accelerated, such acceleration is not rescinded or annulled, within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities a written notice specifying such default and

requiring the Company to cause such indebtedness to be discharged or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(f) the entry by a court having jurisdiction in the premises of (1) a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (2) a decree or order adjudging the Company or any Significant Subsidiary a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary under any applicable federal or state law, or appointing

a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(g) the commencement by the Company or any Significant Subsidiary of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or similar relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action; or

(h) failure by the Company to deliver Conversion Shares, together with cash in lieu of fractional shares, when such Conversion Shares or cash in lieu of fractional shares are required to be delivered upon conversion of a security, and such failure continues for 10 days after such required delivery date.

#### SECTION 4.2 ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default specified in Section 4.1(f) or 4.1(g)) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration, such principal and all accrued interest thereon shall become immediately due and payable. If an Event of Default specified in Section 4.1(f) or 4.1(g) occurs, the principal of, and accrued interest on, all the Securities shall ipso facto become immediately due and payable without any declaration or other Act of the Holder or any act on the part of the Trustee.

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At any time after such declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article Four provided, the Holders of a majority in principal amount of the Outstanding Securities, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(a) the Company has paid or irrevocably deposited with the Trustee a sum sufficient to pay

(1) all overdue interest and Liquidated Damages, if any, on all Securities,

(2) the principal of and premium, if any, on any Securities that have become due otherwise than by such declaration of acceleration and any interest thereon at the rate borne by the Securities,

(3) to the extent permitted by applicable law, interest upon overdue interest at the rate then in effect, and

(4) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the

Trustee, its agents and its counsel; and

(b) all Events of Default, other than the non-payment of the principal of, and any premium and interest on, Securities that have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 4.13.

No rescission or annulment referred to above shall affect any subsequent default or impair any right consequent thereon.

#### SECTION 4.3 COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if:

(a) default is made in the payment of any interest or Liquidated Damages on any Security when it becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof,

the Company will upon demand of the Trustee pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal, premium, if any, Liquidated Damages, if any, and interest on any overdue principal, premium, if any, Liquidated Damages, if any, and, to the extent permitted by applicable law, on any overdue interest at the rate then in effect, and in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel.

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If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### SECTION 4.4 TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relating to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or the creditors of either, the Trustee (whether or not the principal of, and any interest on, the Securities shall then be due and payable as therein expressed or by declaration or otherwise and whether or not the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any, Liquidated Damages, if any, and interest owing and unpaid in respect of the Securities and take such other actions, including participating as a member, voting or otherwise, of any official committee of creditors appointed in such matter, and to file such other papers or documents, in each of the foregoing cases, as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel)

and of the Holders of Securities allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel and any other amounts due the Trustee under Section 5.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder

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thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding; provided, however, that the Trustee may, on behalf of such Holders, vote for the election of a trustee in bankruptcy or similar official.

#### SECTION 4.5 TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, be for the ratable benefit of the Holders of the Securities in respect of which judgment has been recovered.

#### SECTION 4.6 APPLICATION OF MONEY COLLECTED.

Subject to Article Eleven, any money collected by the Trustee pursuant to this Article Four shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 5.7;

SECOND: To the payment of the amounts then due and unpaid for principal of, premium, if any, Liquidated Damages, if any, or interest on, the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, Liquidated Damages, if any, and interest, respectively; and

THIRD: Any remaining amounts shall be repaid to the Company.

#### SECTION 4.7 LIMITATION ON SUITS.

No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(b) the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) the Trustee has not received any direction inconsistent with such written request from the Holders of a majority of the aggregate principal amount of the Outstanding Securities during the 60 day period referred to in (d) above;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

#### SECTION 4.8 UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST AND TO CONVERT.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, premium, if any, and (subject to Section 2.8) interest (and Liquidated Damages, if any) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repurchase, on the Redemption Date or Repurchase Date, as the case may be), and to convert such Security in accordance with Article Ten, and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

#### SECTION 4.9 RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holders shall continue as though no such proceeding had been instituted.

#### SECTION 4.10 RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.7, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

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#### SECTION 4.11 DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article Four or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or (subject to



the limitations contained in this Indenture) by the Holders of Securities, as the case may be.

#### SECTION 4.12 CONTROL BY HOLDERS OF SECURITIES.

The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(a) such direction shall not be in conflict with any rule of law or with this Indenture, and

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

#### SECTION 4.13 WAIVER OF PAST DEFAULTS.

The Holders, either (a) through the written consent of not less than a majority in principal amount of the Outstanding Securities or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in principal amount of the Outstanding Securities represented at such meeting, may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default (1) in the payment of the principal of, premium, if any, interest, the Repurchase Price or Liquidated Damages, if any, on any Security or (2) in respect of a covenant or provision hereof that under Article Seven cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

#### SECTION 4.14 UNDERTAKING FOR COSTS.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 4.14 shall not apply to

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any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Security on or after the respective Stated Maturity or Maturities expressed in such Security (or, in the case of redemption or repurchase, on or after the Redemption Date or Repurchase Date, as the case may be) or for the enforcement of the right to convert any Security in accordance with Article Ten.

#### SECTION 4.15 WAIVER OF STAY, USURY OR EXTENSION LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, usury or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede by reason of such law the execution of any power herein granted to the Trustee but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE FIVE

THE TRUSTEE

SECTION 5.1 CERTAIN DUTIES AND RESPONSIBILITIES.

(a) Except during the continuance of an Event of Default,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

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(1) this paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 5.1;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.1.

SECTION 5.2 NOTICE OF DEFAULTS.

Within 90 days after the occurrence of any default hereunder as to which a Responsible Officer of the Trustee has actually received written notice, the Trustee shall give to all Holders of Securities, in the manner provided in Section 1.6, notice of such default, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of, premium, if any, or interest on any Security, the

Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders. For the purpose of this Section 5.2, the term "default" means any event that is, or after notice or lapse of time or both would become, an Event of Default.

#### SECTION 5.3 CERTAIN RIGHTS OF TRUSTEE.

(a) Subject to the provisions of Section 5.1:

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

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

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

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

#### SECTION 5.4 NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

The recitals contained herein and in the Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture, of the Securities or of the Common Stock issuable upon the conversion of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### SECTION 5.5 MAY HOLD SECURITIES, ACT AS TRUSTEE UNDER OTHER INDENTURES.

The Trustee, any Authenticating Agent, any Paying Agent, any Conversion Agent or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the

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same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Conversion Agent or such other agent.

The Trustee may become and act as trustee under other indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

#### SECTION 5.6 MONEY HELD IN TRUST.

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

#### SECTION 5.7 COMPENSATION AND REIMBURSEMENT.

The Company agrees

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

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

(c) to indemnify the Trustee (and its directors, officers, employees and agents) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense, including taxes (other than taxes based on the income of the Trustee), incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs, expenses and reasonable attorneys' fees of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 4.1(f) or Section 4.1(g) with respect to the Company, the expenses (including the reasonable charges of its counsel) and the compensation for the services are intended to constitute expenses of the administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The Trustee shall have a lien prior to the Securities as to all property and funds held by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 5.7, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

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The provisions of this Section 5.7 shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

#### SECTION 5.8 CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such,

having a combined capital and surplus (or for such purposes, the combined capital and surplus of any parent holding company) of at least U.S. \$25,000,000, subject to supervision or examination by federal or state authority, in good standing and having an established place of business or agency in the Borough of Manhattan, The City of New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 5.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 5.8, it shall resign immediately in the manner and with the effect hereinafter specified in this Article and a successor shall be appointed pursuant to Section 5.9.

#### SECTION 5.9 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 5.10.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 5.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee or the Company may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and the Company. If the instrument of acceptance by a successor Trustee required by Section 5.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee or the Company may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

(1) the Trustee shall cease to be eligible under Section 5.8 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

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then, (i) in any such case the Company may remove the Trustee, or (ii) in the case of clause (d)(1) above only and subject to Section 4.14, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company shall promptly appoint a successor Trustee and shall comply with the applicable requirements of this Section 5.9 and Section 5.10. If, within one year after such resignation, removal or incapability, or occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 5.10, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by this Section 5.9 and Section

5.10, any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The successor Trustee shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders of Securities in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

#### SECTION 5.10 ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee. Such retiring Trustee shall, upon payment of its charges, promptly execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article.

#### SECTION 5.11 MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association resulting from

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any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder (provided such corporation or association shall be otherwise eligible under this Article), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

#### SECTION 5.12 AUTHENTICATING AGENTS.

The Trustee may, with the consent of the Company, appoint an Authenticating Agent or Agents acceptable to the Company with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon exchange or substitution pursuant to this Indenture.

Securities authenticated by an Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder, and every reference in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be subject to acceptance by the Company and shall at all times be a corporation or association organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent and subject to supervision or examination by government or other fiscal authority. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section

5.12, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 5.12.

Any corporation or association into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation or association succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent (provided such corporation or association shall be otherwise eligible under this Section 5.12), without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 5.12, the Trustee may appoint a successor Authenticating Agent, which shall be subject to acceptance by the Company. Any successor Authenticating Agent, upon acceptance

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of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 5.12.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 5.12.

If an Authenticating Agent is appointed with respect to the Securities pursuant to this Section 5.12, the Securities may have endorsed thereon, in addition to or in lieu of the Trustee's certification of authentication, an alternative certificate of authentication in the following form:

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

By: Wells Fargo Bank, National Association,  
as Authenticating Agent

By \_\_\_\_\_  
Authorized Signature

#### SECTION 5.13 DISQUALIFICATION; CONFLICTING INTERESTS.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign as Trustee hereunder, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

#### SECTION 5.14 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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

### ARTICLE SIX

#### CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

#### SECTION 6.1 COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person or convey, transfer, sell or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into it or convey, transfer, sell or lease such Person's properties and assets substantially as an entirety to it, unless:

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(a) the Person formed by such consolidation or into or with which the Company is merged, or the Person to which the Company's properties and assets are conveyed, transferred, sold or leased, shall be (1) a corporation, limited liability company, partnership or trust organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia or (2) organized under the laws of a jurisdiction outside the United States of America and have common stock or American Depositary Shares representing such common stock traded on a national securities exchange in the United States, including The Nasdaq Stock Market, Inc., and, in each case, if other than the Company, shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, premium, if any, Liquidated Damages, if any, and interest on all of the Securities as applicable, and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with, together with any documents required under Section 7.3.

#### SECTION 6.2 SUCCESSOR SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all the properties and assets of the Company in accordance with Section 6.1, the successor Person formed by such consolidation or into or with which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

### ARTICLE SEVEN

#### SUPPLEMENTAL INDENTURES

#### SECTION 7.1 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS OF SECURITIES.

Without the consent of any Holders of Securities, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto for any of the following purposes:

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(a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein and in the Securities as permitted by this Indenture; or

(b) to add to the covenants of the Company for the benefit of the Holders of Securities or to surrender any right or power herein conferred upon the Company; or



(c) to secure the Securities; or

(d) to make provision with respect to the conversion rights of Holders of Securities pursuant to Section 10.11; or

(e) to make any changes or modifications to this Indenture necessary in connection with the registration of any Registrable Securities under the Securities Act as contemplated by the Registration Rights Agreement (provided such action pursuant to this clause (e) shall not adversely affect the interests of the Holders of Securities in any material respect); or

(f) to comply with the requirements of the Trust Indenture Act or the rules and regulations of the Commission thereunder in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, as contemplated by this Indenture or otherwise; or

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee; or

(h) to cure any ambiguity, to correct or supplement any provision herein that may be inconsistent with any other provision herein or that is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture as the Company and the Trustee may deem necessary or desirable (provided such action pursuant to this clause (h) shall not adversely affect the interests of the Holders of Securities in any material respect).

Upon Company Request accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and subject to and upon receipt by the Trustee of the documents described in Section 7.3 hereof, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained.

#### SECTION 7.2 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS OF SECURITIES.

With either (a) the written consent of the Holders of not less than a majority in principal amount of the Outstanding Securities, by the Act of said Holders delivered to the Company and the Trustee, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of a majority in principal amount of the Outstanding Securities represented at such meeting, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; provided, however, that no such supplemental

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indenture shall, without the consent or affirmative vote of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount, any premium or the rate of interest payable thereon, or change the place at which or the coin or currency in which any Security or the interest or any premium thereon or any other amount in respect thereof is payable; or

(2) reduce the amount payable on any Security upon redemption at the Company's option; or

(3) impair the right to institute suit for the enforcement of any payment or conversion in respect of any Security on or after the Stated Maturity thereof (or, in the case of redemption or any repurchase, on or after the Redemption Date or Repurchase Date, as the case may be); or

(4) except as permitted by Section 10.11, adversely affect the right to convert any Security as provided in Article Ten; or

(5) modify the provisions of this Indenture with respect to the

subordination of the Securities in a manner adverse to the Holders of any Securities; or

(6) reduce the percentage in principal amount of the Outstanding Securities the consent of whose Holders is required for any supplemental indenture to modify or amend any provision of this Indenture or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(7) modify any of the provisions of this Section 7.2 except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or

(8) amend or modify the provisions of Article Twelve in a manner adverse to the Holders after the Holder's right to require the Company to repurchase the Securities upon a Change in Control arises.

It shall not be necessary for any Act of Holders of Securities under this Section 7.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

The quorum at any meeting called to adopt a resolution shall be Holders representing a majority in aggregate principal amount of Securities at the time Outstanding.

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#### SECTION 7.3 EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 5.1 and 5.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that such supplemental indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### SECTION 7.4 EFFECT OF SUPPLEMENTAL INDENTURES.

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

#### SECTION 7.5 REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

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

#### SECTION 7.6 NOTICE OF SUPPLEMENTAL INDENTURES.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 7.2, the Company shall give notice to all Holders of Securities of such fact, setting forth in general terms the substance of such supplemental indenture, in the manner provided in Section 1.6. Any failure of the Company to give such notice, or any defect therein, shall not in any way impair or affect the validity of any such

supplemental indenture.

## ARTICLE EIGHT

### COVENANTS

#### SECTION 8.1 PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees that it will duly and punctually pay the principal of and premium, if any, and interest on the Securities in accordance with the terms of the Securities and this Indenture. The Company shall deposit or cause to be deposited with the

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Trustee, no later than 12:00 noon Eastern time on the date of the Stated Maturity of any Security or no later than 12:00 noon Eastern time on the due date for any installment of interest, all payments so due, which payments shall be in immediately available funds on the date of such Stated Maturity or due date, as the case may be.

#### SECTION 8.2 MAINTENANCE OF OFFICES OR AGENCIES.

The Company hereby appoints the Corporate Trust Office or such other office or agency of the Trustee as its agent in the Borough of Manhattan, The City of New York, where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion, and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served.

The Company may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; provided, however, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of, premium, if any, and interest on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 8.3, the Company shall maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment and conversion, where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company shall give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 1.6, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

If at any time the Company shall fail to maintain any such required office or agency, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made and notices and demands may be served on the Corporate Trust Office.

#### SECTION 8.3 MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST.

If the Company will act as its own Paying Agent, it shall, on or before each due date of the principal of, premium, if any, or interest on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, premium, if any, or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and the Company will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, no later than 12:00 noon Eastern time on each due date of the principal of, premium, if any, or interest on any Securities, deposit with the Trustee a sum sufficient to pay the principal, premium, if any, or interest so becoming due, such sum to be held for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 8.3, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of, premium, if any, or interest on Securities for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal, premium, if any, or interest; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Anything contained herein to the contrary notwithstanding, any money held by the Trustee or any Paying Agent in trust for the payment and discharge of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Security that remains unclaimed for two years after the date when each payment of such principal, premium, Liquidated Damages, if any, or interest has become payable shall, upon the request of the Company, be repaid by the Trustee to the Company as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Holders shall look only to the Company for the payment of the principal, premium or interest on such Security. The Trustee shall not be liable to the Company or any Holder for interest on funds held by it for the payment and discharge of the principal, premium or interest on any of the Securities to any Holder. The Company shall not be liable for any interest on the sums paid to it pursuant to this paragraph and shall not be regarded as a trustee of such money.

#### SECTION 8.4 EXISTENCE.

Subject to Article Six, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

#### SECTION 8.5 STATEMENT BY OFFICERS AS TO DEFAULT.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate (one of the signers of which shall be the Company's principal executive, principal financial or principal accounting officer), stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they have knowledge.

The Company will deliver to the Trustee, forthwith upon becoming

aware of any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 8.5 shall be delivered to the Trustee at the Corporate Trust Office.

#### SECTION 8.6 DELIVERY OF CERTAIN INFORMATION.

At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information to such Holder of Securities or such holder of shares of Common Stock issued upon conversion of Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act (or any successor provision thereto) in connection with the resale of any such security; provided, however, that the Company shall not be required to furnish such information in connection with any request made on or after the date that is two years from the later of (a) the date such a security (or any such predecessor security) was last acquired from the Company or (b) the date such a security (or any such predecessor security) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act (or any successor provision thereto). "RULE 144A INFORMATION" shall be such information as is specified pursuant to Rule 144A(d) (4) under the Securities Act (or any successor provision thereto).

### ARTICLE NINE

#### REDEMPTION OF SECURITIES

##### SECTION 9.1 RIGHT OF REDEMPTION.

The Securities may be redeemed in accordance with the provisions of the form of Securities attached hereto as Exhibit A.

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##### SECTION 9.2 APPLICABILITY OF ARTICLE.

Redemption of Securities at the election of the Company or otherwise, as permitted or required by any provision of the Securities or this Indenture, shall be made in accordance with such provision and this Article Nine.

##### SECTION 9.3 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

In case of any redemption at the election of the Company of any of the Securities, the Company shall, at least 40 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date.

##### SECTION 9.4 SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee at least three Business Days prior to the date that the notice described in Section 9.5 is given from the Outstanding Securities not previously called for redemption by lot or such method as the Trustee may deem fair and appropriate.

The Trustee may select for redemption portions of the principal of Securities that have denominations larger than \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount and

certificate numbers thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities that has been or is to be redeemed.

#### SECTION 9.5 NOTICE OF REDEMPTION.

Notice of redemption shall be given in the manner provided in Section 1.6 to the Holders of Securities to be redeemed not less than 30 nor more than 60 days prior to the Redemption Date, and such notice shall be irrevocable.

All notices of redemption shall identify the Securities to be redeemed (including CUSIP numbers) and shall state:

(a) the Redemption Date,

(b) the Redemption Price, and accrued interest and Liquidated Damages, if any,

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(c) if less than all Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed,

(d) that on the Redemption Date the Redemption Price, and accrued interest and Liquidated Damages, if any, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after said date,

(e) the Conversion Rate, the date on which the right to convert the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion, and

(f) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued interest, if any.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name of and at the expense of the Company. Notice of redemption of Securities to be redeemed at the election of the Company received by the Trustee shall be given by the Trustee to each Paying Agent in the name of and at the expense of the Company.

#### SECTION 9.6 DEPOSIT OF REDEMPTION PRICE.

Not less than one Business Day prior to any Redemption Date, the Company shall irrevocably deposit with the Trustee (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 8.3) an amount of money (which shall be in immediately available funds on such Redemption Date) sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities that are to be redeemed on that date other than any Securities called for redemption on that date that have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder or such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 2.8) be paid to the Company on Company Request or, if then held by the Company, shall be discharged from such trust.

#### SECTION 9.7 SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities to be so redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price, including accrued

interest) such Securities shall cease to bear interest. Upon surrender of any Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price together with accrued and unpaid interest, and Liquidated Damages, if any, to the Redemption Date; provided, however, that installments of interest on Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.8.

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If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal amount of, premium, if any, and, to the extent permitted by applicable law, accrued interest on such Security shall, until paid, bear interest from the Redemption Date at the rate then in effect, and such Security shall remain convertible until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

#### SECTION 9.8 SECURITIES REDEEMED IN PART.

Any Security that is to be redeemed only in part shall be surrendered at an office or agency of the Company designated for that purpose pursuant to Section 8.2 (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Registered Security or Securities, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

#### SECTION 9.9 CONVERSION ARRANGEMENT ON CALL FOR REDEMPTION.

In connection with any redemption of the Securities, the Company may arrange for the purchase and conversion of any Securities by an agreement with one or more investment bankers or other purchasers (the "PURCHASERS") to purchase such Securities by irrevocably paying to the Trustee in trust for the Holders, on or before the Redemption Date, an amount not less than the applicable Redemption Price, together with interest accrued and unpaid, and Liquidated Damages, if any, to the Redemption Date, of such Securities. Notwithstanding anything to the contrary contained in this Article Nine, the obligation of the Company to pay the Redemption Price, together with interest accrued and unpaid to the Redemption Date, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such Purchasers. If such an agreement is entered into (a copy of which shall be filed with the Trustee prior to the close of business on the second Business Day immediately prior to the Redemption Date), any Securities called for redemption that are not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, and consistent with any agreement or agreements with such Purchasers, to be acquired by such Purchasers from such Holders and (notwithstanding anything to the contrary contained in this Article Nine) surrendered by such Purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date (and the right to convert any such Securities shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it by the Purchasers to the Holders in the same manner as it would monies deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such Purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities

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between the Company and such Purchasers, including the costs and expenses, including reasonable legal fees, incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

## ARTICLE TEN

### CONVERSION OF SECURITIES

#### SECTION 10.1 CONVERSION PRIVILEGE AND CONVERSION RATE.

Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Security or any portion of the principal amount thereof that is U.S.\$1,000 or an integral multiple of U.S.\$1,000 may be converted into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Common Stock of the Company at the Conversion Rate, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall commence upon the original issuance of the Securities and expire at the close of business on April 15, 2007, unless the Security has been previously redeemed or repurchased, subject, in the case of conversion of any Global Security, to any Applicable Procedures. In case a Security or portion thereof is called for redemption at the election of the Company or the Holder thereof exercises his right to require the Company to repurchase the Security, such conversion right in respect of the Security, or portion thereof so called, shall expire at the close of business on the Business Day immediately preceding the Redemption Date or the Repurchase Date, as the case may be, unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be (in each case subject, as aforesaid, to any Applicable Procedures with respect to any Global Security).

The rate at which shares of Common Stock shall be delivered upon conversion (herein called the "CONVERSION RATE") shall be initially 25.9680 shares of Common Stock for each U.S.\$1,000 principal amount of Securities. The Conversion Rate shall be adjusted in certain instances as provided in this Article Ten.

#### SECTION 10.2 EXERCISE OF CONVERSION PRIVILEGE.

In order to exercise the conversion privilege, the Holder of any Security to be converted shall surrender such Security, duly endorsed or assigned to the Company or in blank, at any office or agency of the Company maintained for that purpose pursuant to Section 8.2, accompanied by a duly signed and completed conversion notice substantially in the form attached hereto as Exhibit C stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted. Each Security surrendered for conversion (in whole or in part) during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date shall (except in the case of any Security or portion thereof that has been called for redemption on a Redemption Date, or is to be repurchased on a Repurchase Date, with the consequence that the conversion right of such Security would terminate between such Regular Record Date and the close of business on such Interest Payment Date) be accompanied by payment in New York Clearing House funds or other funds acceptable

to the Company of an amount equal to the interest and Liquidated Damages, if any, payable on such Interest Payment Date on the principal amount of such Security (or part thereof, as the case may be) being surrendered for conversion. The interest and Liquidated Damages, if any, so payable on such Interest Payment Date, with respect to any Security (or portion thereof, if applicable) that is surrendered for conversion during the period from the close of business on any Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date, shall be paid to the Holder of such Security as of such Regular Record Date. Interest and Liquidated Damages, if any, payable in respect of any Security surrendered for conversion on or after an Interest Payment Date shall be paid to the Holder of such Security as of the next preceding Regular Record Date, notwithstanding the exercise of the right of conversion. Except as provided in this paragraph and subject to the last



paragraph of Section 2.8, no cash payment or adjustment shall be made upon any conversion on account of any interest accrued from the Interest Payment Date next preceding the conversion date, in respect of any Security (or part thereof, as the case may be) surrendered for conversion, or on account of any dividends on the Common Stock issued upon conversion. The Company's delivery to the Holder of the number of shares of Common Stock (and cash in lieu of fractions thereof, as provided in this Indenture) into which a Security is convertible and any rights and warrants pursuant to Section 10.4(m) will be deemed to satisfy the Company's obligation to pay the principal amount of the Security.

Securities shall be deemed to have been converted on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall issue and deliver to the Trustee, for delivery to the Holder, a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share, as provided in Section 10.3.

All shares of Common Stock delivered upon such conversion of Securities shall bear restrictive legends substantially in the form of the legends required to be set forth on the Securities pursuant to Section 2.6 and shall be subject to the restrictions on transfer provided in such legends. Neither the Trustee nor any agent maintained for the purpose of such conversion shall have any responsibility for the inclusion or content of any such restrictive legends on such Common Stock; provided, however, that the Trustee or any agent maintained for the purpose of such conversion shall have provided to the Company or to the Company's transfer agent for such Common Stock, prior to or concurrently with a request to the Company to deliver such Common Stock, written notice that the Securities delivered for conversion are Securities.

In the case of any Security that is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new Registered Security or Securities of authorized denominations in an aggregate principal amount equal to the unconverted portion of the principal amount of such Security. A Security may be converted in part, but only if the principal amount of such Security to be converted is any integral multiple of U.S.\$1,000 and the principal amount of such security to remain Outstanding after such conversion is equal to U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof.

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#### SECTION 10.3 FRACTIONS OF SHARES.

No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares that shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) in an amount equal to the same fraction of the closing sales price of our Common Stock on the New York Stock Exchange (or, if not listed on the New York Stock Exchange, such other national securities exchange or otherwise in the over-the-counter market, as applicable) at the close of business on the day of conversion.

#### SECTION 10.4 ADJUSTMENT OF CONVERSION RATE.

The Conversion Rate shall be subject to adjustments from time to time as follows:

(a) In case the Company shall pay or make a dividend or other distribution on any class of capital stock of the Company payable in shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to

receive such dividend or other distribution shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such increase to become effective (subject to paragraph (l) of this Section 10.4) immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares 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. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(b) In case the Company shall issue rights, options or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (h) of this Section 10.4) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, options or warrants (other than any rights, options or warrants (1) that by their terms will also be issued to any Holder upon conversion of a Security into shares of Common Stock without any action required by the Company or any other Person or (2) that are only exercisable upon the occurrence of specified triggering event and such triggering event has not occurred), the Conversion Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such

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current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such increase to become effective (subject to paragraph (l) of this Section 10.4) immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (b), the number of shares of Common Stock at any time outstanding shall not include shares 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. The Company will not issue any rights, options or warrants in respect of shares of Common Stock held in the treasury of the Company.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class of capital stock, or other property (including cash or assets or securities, but excluding (1) any rights, options or warrants referred to in paragraph (b) of this Section 10.4 and the distribution of rights to all holders of Common Stock pursuant to the adoption of a stockholders' rights plan or the detachment of such rights under the terms of such stockholders' rights plan, (2) any dividend or distribution paid in cash, except as set forth in paragraphs (e) and (f) of this Section 10.4, (3) any dividend or distribution referred to in paragraph (a) of this Section 10.4 and (4) any merger or consolidation to which Section 10.11 applies), the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect

immediately prior to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (h) of this Section 10.4) of the Common Stock on the date fixed for such determination less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets, shares or evidences of indebtedness so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such adjustment to become effective (subject to paragraph (l) of this Section 10.4) immediately prior to the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such distribution.

In addition, if the Company implements a rights plan ("RIGHTS PLAN"), the Company will provide under such Rights Plan that the Holders of the Securities will receive, in addition to the Common Stock, the rights under the Rights Plan (whether or not the rights under the Rights Plan have separated from the Common Stock at the time of conversion), subject to any limitations set forth in the Rights Plan.

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(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding cash portions of distribution referred to in Section 10.4(d) and any cash that is distributed upon a merger or consolidation to which Section 10.11 applies) in an aggregate amount that, combined together with (1) the aggregate amount of any other cash distributions to all holders of its Common Stock made exclusively in cash within the 365-day period preceding the date of payment of such distribution and in respect of which no adjustment pursuant to this paragraph (e) has been made and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of consideration payable in respect of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock concluded within the 365-day period preceding the date of payment of such distribution and in respect of which no adjustment pursuant to paragraph (f) of this Section 10.4 has been made (the "COMBINED CASH AND TENDER AMOUNT") exceeds 10% of the product of the current market price per share (determined as provided in paragraph (h) of this Section 10.4) of the Common Stock on the date for the determination of holders of shares of Common Stock entitled to receive such distribution times the number of shares of Common Stock outstanding on such date (the "AGGREGATE CURRENT MARKET PRICE"), then, and in each such case, immediately after the close of business on such date for determination, subject to paragraph (l) of Section 10.4, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for determination of the stockholders entitled to receive such distribution by a fraction (A) the numerator of which shall be equal to the current market price per share (determined as provided in paragraph (h) of this Section 10.4) of the Common Stock on the date fixed for such determination less an amount equal to the quotient of (i) the excess of such combined cash and tender amount over 10% of such aggregate current market price divided by (ii) the number of shares of Common Stock outstanding on such date fixed for determination and (B) the denominator of which shall be equal to the current market price per share (determined as provided in paragraph (h) of this Section 10.4) of the Common Stock on such date fixed for determination.

(f) In case a tender offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall be completed for an aggregate consideration consisting of cash and/or property having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) that combined together with (1) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), of consideration payable in respect of any other tender offer by the Company or any Subsidiary for all or any portion of the Common Stock concluded within the 365-day period preceding the completion of such tender offer and in respect of which no adjustment pursuant to this paragraph (f) has been made and (2) the aggregate amount of any distributions to all holders of the Company's Common Stock made exclusively in cash within the 365-day period preceding the completion of such tender offer and in respect of which no

adjustment pursuant to paragraph (e) of this Section 10.4 has been made (the "COMBINED TENDER AND CASH AMOUNT") exceeds 10% of the product of the current market price per share of the Common Stock (determined as provided in paragraph (h) of this Section 10.4) as of the completion of such tender offer (the "COMPLETION DATE") times the number of shares of Common Stock outstanding (including any tendered shares) as of the Completion Date, then, and in each such case, immediately prior to the opening

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of business on the day after the date of the Completion Date, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by dividing the Conversion Rate immediately prior to close of business on the Completion Date by a fraction (A) the numerator of which shall be equal to (i) the product of (x) the current market price per share of the Common Stock (determined as provided in paragraph (h) of this Section 10.4) on the Completion Date multiplied by (y) the number of shares of Common Stock outstanding (including any tendered shares) on the Completion Date less (ii) the combined tender and cash amount, and (B) the denominator of which shall be equal to the product of (x) the current market price per share of the Common Stock (determined as provided in paragraph (h) of this Section 10.4) as of the Completion Date multiplied by (y) the number of shares of Common Stock outstanding (including any tendered shares) as of the Completion Date less the number of all shares validly tendered and not withdrawn as of the Completion Date (the shares deemed so accepted up to any such maximum, being referred to as the "PURCHASED SHARES").

(g) The reclassification of Common Stock into securities including other than Common Stock (other than any reclassification upon a consolidation or merger to which Section 10.11 applies) shall be deemed to involve (1) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of stockholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (d) of this Section 10.4), and (2) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective", as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of paragraph (c) of this Section 10.4).

(h) For the purpose of any computation under paragraphs (b), (d), (e) or (f) of this Section 10.4, the current market price per share of Common Stock on any date shall be calculated by the Company and be deemed to be the average of the daily Average Sales Prices Per Share for the five consecutive Trading Days selected by the Company commencing not more than 10 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. For purposes of this paragraph, the term "ex date," when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way in the applicable securities market or on the applicable securities exchange without the right to receive such issuance or distribution.

(i) No adjustment in the Conversion Rate shall be required unless such adjustment (plus any adjustments not previously made by reason of this paragraph (i)) would require an increase or decrease of at least one percent in such rate; provided, however, that any adjustments which by reason of this paragraph (i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

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(j) The Company may make such increases in the Conversion Rate, for the remaining term of the Securities or any shorter term, in addition to those

required by paragraphs (a), (b), (c), (d), (e) and (f) of this Section 10.4, as it considers to be advisable in order to avoid or diminish any income tax liability to any holders of shares of Common Stock resulting from any dividend or distribution of Common Stock or issuance of rights or warrants to purchase or subscribe for Common Stock or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) 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; provided, however, that such increase shall not be taken into account for purposes of determining whether the Average Sales Price Per Share of the Common Stock exceeds the Conversion Price by 105% in connection with an event which would otherwise be a Change in Control. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall give notice of the increase to the Holders of Securities in the manner provided in Section 1.6 at least fifteen (15) 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.

(k) Notwithstanding the foregoing provisions of this Section 10.4, no adjustment of the Conversion Rate shall be required to be made (1) upon the issuance of shares of Common Stock pursuant to any present or future plan for the reinvestment of dividends, (2) because of a tender or exchange offer of the character described in Rule 13e-4(h) (5) under the Exchange Act or any successor rule thereto or (3) as a result of a rights plan or poison pill implemented by the Company.

(l) In any case in which this Section 10.4 shall require that an adjustment be made immediately following a record date, the Company may elect to defer the effectiveness of such adjustment (but in no event until a date later than the effective time of the event giving rise to such adjustment), in which case the Company shall, with respect to any Security converted after such record date and on and before such adjustment shall have become effective (1) defer paying any cash payment pursuant to Section 10.3 hereof or issuing to the Holder of such Security the number of shares of Common Stock issuable upon such conversion in excess of the number of shares of Common Stock issuable thereupon only on the basis of the Conversion Rate prior to adjustment, and (2) not later than five Business Days after such adjustment shall have become effective, pay to such Holder the appropriate cash payment pursuant to Section 10.3 hereof and issue to such Holder the additional shares of Common Stock issuable on such conversion. Notwithstanding the foregoing, no adjustment of the Conversion Rate shall be made if the event giving rise to such adjustment does not occur.

(m) In the event that the Company distributes rights or warrants (other than those referred to in paragraph (b) above) pro rata to holders of Common Stock, so long as any such rights or warrants have not expired or been redeemed by the Company, the Company shall make proper provision so that the Holder of any Security surrendered for conversion will be entitled to receive upon such conversion, in addition to the Common Stock issuable upon conversion of the Securities (the "CONVERSION SHARES"), a number of rights and warrants to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to

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the holders of rights or warrants of separate certificates evidencing such rights or warrants (the "DISTRIBUTION DATE"), the same number of rights or warrants to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the rights or warrants, and (ii) if such conversion occurs after such Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Common Stock into which the principal amount of such Security so converted was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date in accordance with the terms and provisions of and applicable to the rights or warrants.

SECTION 10.5 NOTICE OF ADJUSTMENTS OF CONVERSION RATE.

Whenever the Conversion Rate is adjusted as herein provided:

(a) the Company shall compute the adjusted Conversion Rate in accordance with Section 10.4 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with the Conversion Agent; and

(b) upon each such adjustment, a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall be required, and as soon as practicable after it is required, such notice shall be provided by the Company to all Holders in accordance with Section 1.6.

Neither the Trustee nor the Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Securities desiring inspection thereof at its office during normal business hours. Unless and until a Responsible Officer of the Trustee and Conversion Agent receive notice of an adjusted Conversion Rate, the Trustee and the Conversion Agent may rely without inquiry on the Conversion Rate most recently in effect.

#### SECTION 10.6 NOTICE OF CERTAIN CORPORATE ACTION.

In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock payable (i) otherwise than exclusively in cash or (ii) exclusively in cash in an amount that would require any adjustment pursuant to Section 10.4; or

(b) the Company shall authorize the granting to the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(c) of any reclassification of the Common Stock of the Company, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any stockholders of the Company is required, or of the conveyance, sale, transfer or lease of all or substantially all of the assets of the Company; or

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(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 8.2, and shall cause to be provided to all Holders in accordance with Section 1.6, at least 20 days (or 10 days in any case specified in clause (a) or (b) above) prior to the applicable record or effective date hereinafter specified, a notice stating (1) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, options or warrants are to be determined or (2) the date on which such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, conveyance, transfer, sale, lease, dissolution, liquidation or winding up. Neither the failure to give such notice or the notice referred to in the following paragraph nor any defect therein shall affect the legality or validity of the proceedings described in clauses (a) through (d) of this Section 10.6. If at the time the Trustee shall not be the Conversion Agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

The Company shall cause to be filed at each office or agency

maintained for the purpose of conversion of Securities pursuant to Section 8.2, and shall cause to be provided to all Holders in accordance with Section 1.6, notice of any tender offer by the Company or any Subsidiary for all or any portion of the Common Stock at or about the time that such notice of tender offer is provided to the public generally.

#### SECTION 10.7 COMPANY TO RESERVE COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock then issuable upon the conversion of all Outstanding Securities.

#### SECTION 10.8 TAXES ON CONVERSIONS.

Except as provided in the next sentence, the Company will pay any and all transfer, stamp, documentary and other similar taxes and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty or has established to the satisfaction of the Company that such tax or duty has been paid.

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#### SECTION 10.9 COVENANT AS TO COMMON STOCK.

The Company agrees that all shares of Common Stock that may be delivered upon conversion of Securities, upon such delivery, will be newly issued shares and will have been duly authorized and validly issued and will be fully paid and nonassessable and, except as provided in Section 10.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

#### SECTION 10.10 CANCELLATION OF CONVERTED SECURITIES.

All Securities delivered for conversion shall be delivered to the Trustee or its agent to be cancelled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.10.

#### SECTION 10.11 PROVISION IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS.

In case of any consolidation or merger of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, the Person formed by such consolidation or resulting from such merger or that acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then Outstanding shall have the right thereafter, during the period such Security shall be convertible as specified in Section 11.1, to convert such Security only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger, conveyance, sale, transfer or lease, assuming such holder of Common Stock of the Company (a) is not a Person with which the Company consolidated or merged with or into or that merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a "CONSTITUENT PERSON"), or an Affiliate of a Constituent Person and (b) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer, or lease is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease by others than a Constituent Person or an

Affiliate thereof and in respect of which such rights of election shall not have been exercised ("NON-ELECTING SHARE"), then for the purpose of this Section 10.11 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by the holders of each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-electing Shares). Such supplemental indenture shall provide for adjustments that, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The above provisions of this Section 10.11 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture

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shall be given by the Company to the Holder of each Security as provided in Section 1.6 promptly upon such execution.

Neither the Trustee nor the Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities upon the conversion of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Officers Certificate or an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

#### SECTION 10.12 RESPONSIBILITY OF TRUSTEE FOR CONVERSION PROVISIONS.

The Trustee, subject to the provisions of Section 5.1, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist that may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee, subject to the provisions of Section 5.1, nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, that may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 5.1, nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 5.1, and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

### ARTICLE ELEVEN

#### SUBORDINATION OF SECURITIES

##### SECTION 11.1 SECURITIES SUBORDINATE TO SENIOR DEBT.

The Company covenants and agrees, and each Holder of a Security by his acceptance thereof likewise covenants and agrees, that to the extent and in the manner hereinafter set forth in this Article (subject to the provisions of Article Three) the indebtedness represented by the Securities and the payment of the principal of (and premium, if any) and interest on, and any payment of the Repurchase Price with respect to, each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full in cash or Cash Equivalents of all Senior Debt.

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##### SECTION 11.2 NO PAYMENTS IN CERTAIN CIRCUMSTANCES; PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.



No payment on account of principal of, premium, if any, or interest (and Liquidated Damages, if any) on, or redemption or repurchase of, the Securities shall be made if, at the time of such payment: (a) a default in the payment of principal, premium, if any, or interest or other amounts due on or in connection with any Senior Debt, including any default under any redemption or repurchase obligation, occurs and is continuing (or, in the case of Senior Debt for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Senior Debt), unless and until such default shall have been cured or waived or shall have ceased to exist; or (b) a default, other than a payment default, on Designated Senior Debt occurs and is continuing that then permits holders of such Designated Senior Debt to accelerate its maturity and the Trustee receives a notice of the default (a "PAYMENT BLOCKAGE NOTICE") from the Company, a holder of Designated Senior Debt or a Representative. Notwithstanding the foregoing, the Company may make, and the Trustee may receive and shall apply, any payment in respect of the Securities (for principal, premium, if any, or interest (and Liquidated Damages, if any) or repurchase) if such payment was made prior to the occurrence of any of the contingencies specified in clauses (a) and (b) above.

If the Trustee receives any Payment Blockage Notice pursuant to clause (b) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section 11.2 unless and until (1) at least 365 days shall have elapsed since the effectiveness of the immediately prior Payment Blockage Notice and (2) all scheduled payments of principal, premium, if any, interest and Liquidated Damages, if any, on the Securities that have come due have been paid in full in cash. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice unless such existing nonpayment default has been cured for a period of at least 90 days.

The Company may and shall resume payments on and distributions in respect of the Securities (including missed payments, if any) upon the earlier of: (A) the date upon which the default is cured or waived, or (B) in the case of a default referred to in clause (b) of the second preceding paragraph, 179 days after notice is received if the maturity of such Designated Senior Debt has not been accelerated such that such debt is then presently payable, unless this Indenture otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon (i) any acceleration of the principal amount due on the Securities or (ii) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all principal of, premium, if any, sinking fund and interest or other amounts due, or to become due, upon or in connection with all Senior Debt shall first be paid in full in cash or Cash Equivalents, or payment thereof provided for in cash or Cash Equivalents in accordance with its terms, before any payment is made on account of the principal of, premium, if any, or interest (and Liquidated Damages, if any) on, or repurchase of, the

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indebtedness evidenced by the Securities, and upon any such dissolution or winding up or liquidation or reorganization any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee under this Indenture would be entitled, except for the provisions hereof, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, as the case may be, directly to the holders of Senior Debt (pro rata to each such holder on the basis of the respective amounts of Senior Debt held by such holder) or their representatives, to the extent necessary to pay all Senior Debt in full, in cash or Cash Equivalents, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to the Holders of the Securities or to the Trustee under this Indenture.

In the event that, contrary to the foregoing, any payment or

distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than junior securities, as defined in Section 11.11), shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full in cash or Cash Equivalents or provision made for such payment in accordance with its terms, such payment or distribution shall be paid over or delivered to the holders of such Senior Debt or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt have been issued, as their respective interests may appear, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay all such Senior Debt in full in cash or Cash Equivalents in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

Subject to the payment in full in cash or Cash Equivalents of all Senior Debt, the Holders of the Securities (together with the holders of any other indebtedness of the Company that is subordinated in right of payment to the payment in full of all Senior Debt that is not subordinated in right of payment to the Securities and that by its terms grants such right of subrogation to the holders thereof) shall be subrogated to the rights of the holders of Senior Debt to receive payments or distribution of assets of the Company made on the Senior Debt until the principal of, premium, if any, and interest on, or amounts payable upon repurchase of, the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payment over pursuant to the provisions of this Article to the holders of Senior Debt by the Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of Securities, be deemed to be a payment by the Company to the holders of or on account of Senior Debt, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Debt, on the other hand.

#### SECTION 11.3 TRUSTEE TO EFFECTUATE SUBORDINATION.

Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the

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subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

#### SECTION 11.4 NO WAIVER OF SUBORDINATION PROVISIONS.

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

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

#### SECTION 11.5 NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 5.1, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 11.5 prior to the date upon which by the terms hereof any money may become payable for any purpose (including without limitation the payment of the principal of (and premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

Subject to the provisions of Section 5.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee, agent or representative therefor) to establish that such notice has been given by a

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holder of Senior Debt (or a trustee, agent or representative therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article Eleven, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article Eleven, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

#### SECTION 11.6 RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 5.1, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

#### SECTION 11.7 TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR DEBT.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article Eleven, and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture against the Trustee.

#### SECTION 11.8 RELIANCE BY HOLDERS OF SENIOR DEBT ON SUBORDINATION PROVISIONS.

Each Holder by accepting a Security acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Debt, whether such Senior Debt was created or acquired before or after the issuance of the Securities, to acquire and continue to hold, or to continue to hold, such Senior Debt, and such holder of Senior Debt shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Debt. Such holders of the Company's Senior Debt are intended by the parties to the Indenture to be third party creditor beneficiaries under this Indenture for the purposes of enforcing the provisions of this Article Eleven.

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#### SECTION 11.9 RIGHTS OF TRUSTEE AS HOLDER OF SENIOR DEBT; PRESERVATION OF TRUSTEE'S RIGHTS.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article Eleven with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article Eleven shall apply to claims of, or payments to, the Trustee under or pursuant to Section 5.7.

#### SECTION 11.10 ARTICLE APPLICABLE TO PAYING AGENTS.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article Eleven in addition to or in place of the Trustee; provided, however, that Section 11.9 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

#### SECTION 11.11 CERTAIN CONVERSIONS AND REPURCHASES DEEMED PAYMENT.

For the purposes of this Article Eleven only, (a) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article Ten or upon the repurchase of Securities in accordance with Article Twelve shall not be deemed to constitute a payment or distribution on account of the principal of or premium or interest or Liquidated Damages on Securities or on account of the purchase or other acquisition of Securities, and (b) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section 11.11, the term "junior securities" means (1) shares of any stock of any class of the Company and any cash, property or securities into which the Securities are convertible pursuant to Article Ten and (2) securities of the Company that are subordinated in right of payment to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article Eleven. Nothing contained in this Article Eleven or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article Ten or to exchange such Security for Common Stock in accordance with Article Twelve if the Company elects to satisfy the obligations under Article Twelve by the delivery of Common Stock.

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### ARTICLE TWELVE

#### REPURCHASE OF SECURITIES AT THE OPTION OF THE HOLDER UPON A CHANGE IN CONTROL

##### SECTION 12.1 RIGHT TO REQUIRE REPURCHASE.

In the event that a Change in Control shall occur, then each Holder shall have the right, at the Holder's option, but subject to the provisions of Section 12.2, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the principal amount thereof that is equal to U.S.\$1,000 or any greater integral multiple of U.S.\$1,000, on the date (the "REPURCHASE DATE") that is fixed by the Company at a cash purchase price equal to 100% of the principal amount of the Securities to be repurchased plus interest accrued to the Repurchase Date (the "REPURCHASE PRICE"); provided, however, that installments of interest and Liquidated Damages, if any, on Securities whose Stated Maturity is on or prior to the Repurchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.8. The Repurchase Date will be determined by the Company in the following manner: (i) the Company will give notice of the Change in Control as contemplated in Section 12.3(a); (ii) each Holder electing to exercise the repurchase right must deliver, on or before the thirtieth (30th) day (or such greater period as may be required by applicable law) after the date of the Company's notice provided in provision (i) above: (A) irrevocable written notice to the trustee of such Holder's exercise of its repurchase right, and (B) the Securities with respect to which such repurchase right is being exercised; and (iii) the Company will make the repurchase on a date that is no later than 45 days after the Holder has delivered the notice provided in proviso (ii) above. Such right to require the repurchase of the Securities shall not continue after a discharge of the Company from its obligations with respect to the Securities in accordance with Article Three unless a Change in Control shall have occurred prior to such discharge. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the fulfillment by the Company of the conditions set forth Section 12.2, by delivery of shares of Common Stock or in a combination of cash and Common Stock having a fair market value equal to the Repurchase Price. Whenever in this Indenture (including Sections 2.2, 4.1(a) and 4.8) there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price that has become and remains payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made; provided, however, that for the purposes of Article Eleven such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

For purposes of this Section 12.1, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the high and low sales price per share of the Common Stock on the New York Stock Exchange (or, if not listed on the New York Stock Exchange, such other national securities exchange or otherwise in

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the over-the-counter market, as applicable) for each of the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

#### SECTION 12.2 CONDITIONS TO THE COMPANY'S ELECTION TO PAY THE REPURCHASE PRICE IN COMMON STOCK.

The Company may elect to pay the Repurchase Price by delivery of shares of Common Stock pursuant to Section 12.1 if and only if the following conditions shall have been satisfied:

(a) As to each Holder, the Repurchase Price shall be paid only in cash in the event any shares of Common Stock to be issued to such Holder upon repurchase of Securities hereunder (1) require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase and if such registration is not completed or does not become effective prior to the Repurchase Date or (2) require registration with or approval of any governmental authority under any state law or any other federal law before such shares may be validly issued or delivered upon repurchase and if such registration is not completed or does not become effective or such approval is

not obtained prior to the Repurchase Date;

(b) Payment of the Repurchase Price may not be made in Common Stock unless such stock is, or shall have been, approved for quotation on The Nasdaq Stock Market or listed or quoted on a national securities exchange or other quotation system, in either case, prior to the Repurchase Date; and

(c) All shares of Common Stock that may be issued upon repurchase of Securities will be issued out of the Company's authorized but unissued Common Stock will and, upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive rights.

If all of the conditions set forth in this Section 12.2 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

#### SECTION 12.3 NOTICES; METHOD OF EXERCISING REPURCHASE RIGHT, ETC.

(a) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, on or before the thirtieth day after the occurrence of a Change in Control, the Company or, at the request and expense of the Company on or before the thirtieth day after such occurrence, the Trustee, shall give to all Holders of Securities, in the manner provided in Section 1.6, notice (the "COMPANY NOTICE") of the occurrence of the Change in Control and of the repurchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a repurchase right to the Trustee.

Each notice of a repurchase right shall state:

(1) the Repurchase Date,

(2) the date by which the repurchase right must be exercised,

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(3) the Repurchase Price, and whether the Repurchase Price shall be paid by the Company in cash or by delivery of shares of Common Stock,

(4) a description of the procedure that a Holder must follow to exercise a repurchase right, and the place or places where such Securities are to be surrendered for payment of the Repurchase Price and accrued interest and Liquidated Damages, if any,

(5) that on the Repurchase Date, the Repurchase Price, and accrued interest and Liquidated Damages, if any, will become due and payable upon each such Security designated by the Holder to be repurchased and that interest thereon shall cease to accrue on and after said date,

(6) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place or places where such Securities may be surrendered for conversion,

(7) the place or places that the Notice of Election of Holder to Require Repurchase attached hereto as Exhibit B, shall be delivered, and the form of such notice, and

(8) the CUSIP number or numbers of such Securities.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article Twelve are inconsistent with applicable law, such law shall govern.

(b) To exercise a repurchase right, a Holder shall deliver to the Trustee on or before the thirtieth day (or such greater period as may be required by applicable law) after the date of the Company Notice (1) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased

(and, if any Security is to repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased and the name of the Person in which the portion thereof to remain Outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby, and, in the event that the Repurchase Price shall be paid in shares of Common Stock, the name or names (with addresses) in which the certificate or certificates for shares of Common Stock shall be issued, and (2) the Securities with respect to which the repurchase right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the repurchase right is being exercised shall continue until the close of business on the Business Day immediately preceding the Repurchase Date.

(c) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Repurchase Price in cash or shares of Common Stock, as provided above, for payment to the Holder on the Repurchase Date or, if shares of Common Stock are to be paid, as promptly after the Repurchase

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Date as practicable, together with accrued and unpaid interest and Liquidated Damages, if any, to the Repurchase Date payable with respect to the Securities as to which the purchase right has been exercised; provided, however, that installments of interest that mature on or prior to the Repurchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

(d) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the rate then in effect per annum, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(e) Any Security that is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unreurchased portion of the principal of the Security so surrendered.

(f) Any issuance of shares of Common Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock issued upon repurchase of any Security declared prior to the Repurchase Date.

(g) No fractions of shares shall be issued upon repurchase of Securities. If more than one Security shall be repurchased from the same Holder and the Repurchase Price shall be payable in shares of Common Stock, the number of full shares that shall be issuable upon such repurchase shall be computed on the basis of the aggregate principal amount of the Securities so repurchased. Instead of any fractional share of Common Stock that would otherwise be issuable on the repurchase of any Security or Securities, the Company will deliver to the applicable Holder its check for the current market value of such fractional

share. The current market value of a fraction of a share is determined by multiplying the current market price of a full share by the fraction and rounding the result to the nearest cent. For purposes of this Section 12.3, the current market price of a share of Common Stock is the average of the high

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and low sales price per Share of the Common Stock on the Trading Day immediately preceding the Repurchase Date.

(h) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Securities shall be made without charge to the Holder of Securities being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the securities represented thereby; provided, however, that the Company shall not be required to pay any tax or duty that may be payable in respect of (1) income of the Holder or (2) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Securities being repurchased, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(i) All Securities delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.10.

#### ARTICLE THIRTEEN

##### HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY; NON-RECOURSE

##### SECTION 13.1 COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not more than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities as of such Regular Record Date, and

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

provided, however, that no such list need be furnished so long as the Trustee is acting as Security Registrar.

##### SECTION 13.2 PRESERVATION OF INFORMATION.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 13.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 13.1 upon receipt of a new list so furnished.

(b) After this Indenture has been qualified under the Trust Indenture Act, the rights of Holders to communicate with other Holders with respect to their rights under this

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Indenture or under the Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.



SECTION 13.3 NO RECOURSE AGAINST OTHERS.

An incorporator or any past, present or future director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability. Such waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 13.4 REPORTS BY TRUSTEE.

(a) After this Indenture has been qualified under the Trust Indenture Act, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided therein. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each \_\_\_\_\_ following the date of this Indenture, deliver to Holders a brief report, dated as of such \_\_\_\_\_, that complies with the provisions of such Section 313(a).

(b) After this Indenture has been qualified under the Trust Indenture Act, a copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange.

SECTION 13.5 REPORTS BY COMPANY.

After this Indenture has been qualified under the Trust Indenture Act, the Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided therein; provided, however, that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

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

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

Skechers U.S.A., Inc.

By /s/ DAVID WEINBERG

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Name: David Weinberg  
Title: Chief Financial Officer

Wells Fargo Bank, National Association,  
as Trustee

By /s/ JEANIE MAR

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Name: Jeanie Mar  
Title: Vice President

[FORM OF FACE]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH RESTRICTED SECURITY OTHER THAN ANY RESTRICTED GLOBAL SECURITY:

THIS NOTE AND ANY COMMON STOCK ISSUABLE UPON THE CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THIS NOTE AND ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON WHO THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT THAT PRIOR TO SUCH TRANSFER PROVIDES TO THE TRUSTEE FOR THE NOTES A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTES (THE FORM OF THE LETTER CAN BE OBTAINED FROM THE TRUSTEE OF THE NOTES), (4) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO SKECHERS U.S.A., INC.) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS NOTE, ANY SHARES OF COMMON STOCK ISSUABLE UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON REALES AND OTHER TRANSFERS OF THIS NOTE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE REALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS NOTE AND SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF

THIS NOTE AND ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH RESTRICTED GLOBAL SECURITY:

THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON THE CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON THAT THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT THAT PRIOR TO SUCH TRANSFER PROVIDES TO THE TRUSTEE FOR THE NOTES A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTES (THE FORM OF THE LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THE NOTES), (4) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO SKECHERS U.S.A., INC.) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND (B) IN ACCORDANCE WITH ALL

APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS NOTE, ANY CLASS A COMMON SHARES ISSUABLE UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON REALES AND OTHER TRANSFERS OF THIS NOTE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS

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NOTE AND SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF THIS NOTE AND ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.]

[THE FOLLOWING LEGEND SHALL APPEAR ON THE FACE OF EACH GLOBAL SECURITY FOR WHICH THE DEPOSITARY TRUST COMPANY IS TO BE THE DEPOSITARY:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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SKECHERS U.S.A., INC.

\_\_\_\_\_% CONVERTIBLE SUBORDINATED NOTE DUE \_\_\_\_\_, 2007

NO. \_\_\_\_\_ U.S.\$ \_\_\_\_\_

CUSIP NO. \_\_\_\_\_

Skechers U.S.A., Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company," which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of \_\_\_\_\_ United States Dollars (U.S.\$ \_\_\_\_\_) [IF THIS SECURITY IS A GLOBAL SECURITY, THEN INSERT -- (WHICH PRINCIPAL AMOUNT MAY FROM TIME TO TIME BE INCREASED OR DECREASED TO SUCH OTHER PRINCIPAL AMOUNTS (WHICH, TAKEN TOGETHER WITH THE PRINCIPAL AMOUNTS OF ALL OTHER OUTSTANDING SECURITIES, SHALL NOT EXCEED \$\_\_\_\_\_,000,000 IN THE AGGREGATE AT ANY TIME, UNLESS THE INITIAL PURCHASER EXERCISES AS OVER-ALLOTMENT RIGHTS, IN WHICH CASE THE PRINCIPAL AMOUNT OF THE OUTSTANDING SECURITIES SHALL NOT EXCEED U.S. \$\_\_\_\_\_,000,000) BY ADJUSTMENTS MADE ON THE RECORDS OF THE TRUSTEE HEREINAFTER REFERRED TO IN ACCORDANCE WITH THE INDENTURE)] on \_\_\_\_\_, 2007, unless redeemed or repurchased on an earlier date, and to pay interest thereon, from \_\_\_\_\_, 2002, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semiannually in arrears on \_\_\_\_\_ and \_\_\_\_\_ in each year (each, an "Interest Payment Date"), commencing \_\_\_\_\_, 2002, at the rate of \_\_\_\_\_% per annum, until the principal hereof is due, and at the rate then in effect on any overdue principal and premium, if any, and, to the extent permitted by law, on any overdue interest. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such

interest, which shall be the \_\_\_\_\_ and \_\_\_\_\_ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Company, notice whereof shall be given to Holders of Registered Securities not less than ten days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments of principal shall be made upon the surrender of this Security at the option of the Holder at the Corporate Trust Office or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or at such other offices or agencies as the Company may designate, by United States Dollar check drawn on, or wire transfer to, a United States Dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Registered Securities in excess of U.S.\$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior

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to the relevant payment date) maintained by the payee. Payment of interest on this Security may be made by United States Dollar check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or, upon written application by the Holder to the Security Registrar setting forth wire instructions not later than the relevant Record Date, by wire transfer to a United States dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Registered Securities in excess of U.S.\$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date) maintained by the payee.

Except as specifically provided herein and in the Indenture, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

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

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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

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SKECHERS U.S.A., INC.

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

Name:

Title:

Attest:

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Name:

Dated: April 9, 2002

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee

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

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[FORM OF REVERSE]

This Security is one of a duly authorized issue of securities of the Company designated as its "      % Convertible Subordinated Notes due       , 2007" (herein called the "Securities"), limited in aggregate principal amount to U.S.\$       ,000,000 (U.S.\$       ,000,000 if the over-allotment is fully exercised), issued and to be issued under an Indenture, dated as of       , 2002 (herein called the "Indenture"), between the Company and Wells Fargo Bank, National Association, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. As provided in the Indenture and subject to certain limitations set forth therein, Registered Securities are exchangeable for a like aggregate principal amount of Registered Securities of any authorized denominations as requested by the Holder surrendering the same upon surrender of the Registered Security or Registered Securities to be exchanged at the Corporate Trust Office. The Trustee upon such surrender by the Holder will issue the new Registered Securities in the requested denominations.

No sinking fund is provided for the Securities.

The Securities are subject to redemption at the option of the Company at any time on or after       , 2005, in whole or in part, upon not less than 30 nor more than 60 days' notice to the Holders prior to the Redemption Date at the following Redemption Prices (expressed as percentages of the principal amount) for the twelve-month period beginning on        of the following years (       through        in the case of the first of such periods):

<TABLE>  
<CAPTION>

YEAR	REDEMPTION PRICE
-----	-----
<S>	<C>
2005.....	_____ %
2006.....	_____ %

</TABLE>  
and thereafter at a Redemption Price equal to 100% of the principal amount, together, in each case, with accrued interest to, but excluding the Redemption Date; provided, however, that interest installments on Securities whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

The Securities are subject to redemption at the option of the Company at any time before       , 2005 ("Provisional Redemption"), in whole or in part, upon not less than 30 nor more than 60 days' notice to the Holders prior to the Redemption Date at a Redemption Price equal to 100% of the principal amount, together, in each case, with accrued interest and Liquidated Damages, if any,

to, but excluding, the Redemption Date, if (a) the closing price of

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the Company's Common Stock has exceeded 150% of the Conversion Price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day immediately before the date of mailing of the notice of the Provisional Redemption, and (b) the Shelf Registration Statement is effective and available for use and is expected to remain effective and available for use for the 30 days following the Redemption Date, unless registration is no longer required. Upon any Provisional Redemption, the Company will pay to the Holders cash or Common Stock, or in a combination of cash and Common Stock, with respect to the Securities called for Provisional Redemption, and previously converted after the notice of Provisional Redemption and before to the date of the Provisional Redemption, in an amount equal to \$\_\_\_\_\_ per \$1,000 principal amount of the Securities, less the amount of any interest paid on the Securities before the date of the Provisional Redemption. For purposes of any such payment in Common Stock, the value of such Common Stock will be at 95% of the average of the closing sales prices of the Company's Common Stock for each of the five trading days ending with the third trading day immediately prior to the Redemption Date.

In the event of a redemption of the Securities, the Company will not be required (a) to register the transfer or exchange of Registered Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption (it being understood that the Company will not be required to identify the serial numbers of Outstanding Securities if all such Securities are called for redemption) or (b) to register the transfer or exchange of any Registered Security, or portion thereof, called for redemption.

Notice to the Holders will be given not less than 30 nor more than 60 days prior to the Redemption Date as provided in the Indenture.

In any case where the due date for the payment of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Security or the last day on which a Holder of a Security has a right to convert his Security shall be, at any Place of Payment or Place of Conversion, as the case may be, a day on which banking institutions at such Place of Payment or Place of Conversion are authorized or obligated by law or executive order to close, then payment of principal, premium, if any, Liquidated Damages, if any, or interest or delivery for conversion of such Security need not be made on or by such date at such place but may be made on or by the next succeeding day at such place which is not a day on which banking institutions are authorized or obligated by law or executive order to close, with the same force and effect as if made on the date for such payment or the date fixed for redemption or repurchase, or by such last day for conversion, and no interest shall accrue on the amount so payable for the period from and after such due date.

Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time following the original issue date of the Securities and on or before the close of business on \_\_\_\_\_, 2007, or in case this Security or a portion hereof is called for redemption or the Holder hereof has exercised his right to require the Company to repurchase this Security or such portion hereof, then in respect of this Security until

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and including, but (unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be) not after, the close of business on the Business Day immediately preceding the Redemption Date or the Repurchase Date, as the case may be, to convert this Security or any portion of the principal amount hereof that is an integral multiple of U.S.\$1,000 (provided that the unconverted portion of such principal amount is U.S.\$1,000 or any integral multiple of U.S.\$1,000 in excess thereof) into fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate of \_\_\_\_\_ (or at the current adjusted Conversion Rate if an adjustment has been made as provided in the Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank and, in case such surrender shall be made during the period from the close of business on any Regular Record

Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date (except if this Security has been called for redemption on a Redemption Date or is repurchasable on a Repurchase Date, with the consequence that the conversion right of such Security would terminate between such Regular Record Date and the close of business on such Interest Payment Date), also accompanied by payment in New York Clearing House or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted, and also the conversion notice hereon duly executed, to the Company at the Corporate Trust Office, or at such other office or agency of the Company, subject to any laws or regulations applicable thereto and subject to the right of the Company to terminate the appointment of any Conversion Agent (as defined below) as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate (each a "Conversion Agent"), provided, further, that in case surrender of this Security for conversion shall be made during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date and if this Security or portion hereof has been called for redemption on a Redemption Date or is repurchasable on a Repurchase Date, with the consequence that the conversion right of such Security would terminate between such Regular Record Date and the close of business on such Interest Payment Date, then the Holder of this Security will be entitled to receive the interest accruing hereon from the Interest Payment Date next preceding the date of such conversion to such succeeding Interest Payment Date and shall not be required to pay such interest upon surrender of this Security for conversion. Subject to the provisions of the preceding sentence and, in the case of a conversion after the close of business on the Regular Record Date next preceding any Interest Payment Date and on or before the close of business on such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security of record as of such Regular Record Date) to receive the related installment of interest to the extent and under the circumstances provided in the Indenture, no cash payment or adjustment is to be made on conversion for interest accrued hereon from the Interest Payment Date next preceding the day of conversion, or for dividends on the Common Stock issued on conversion hereof. The Company shall thereafter deliver to the Holder the fixed number of shares of Common Stock (together with any cash adjustment or rights or warrants, as provided in the Indenture) into which this Security is convertible and such delivery will be deemed to satisfy the Company's obligation to pay the principal amount of this Security. No fractions of shares or scrip representing fractions of shares will be issued on

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conversion, but instead of any fractional interest (calculated to the nearest 1/100th of a share) the Company shall pay a cash adjustment as provided in the Indenture. The Conversion Rate is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the conveyance, transfer, sale or lease of all or substantially all of the property and assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then Outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, transfer, sale or lease by a holder of the number of shares of Common Stock of the Company into which this Security could have been converted immediately prior to such consolidation, merger, conveyance, transfer, sale or lease (assuming such holder of Common Stock is not a Constituent Person, failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of Non-electing Shares). No adjustment in the Conversion Rate will be made until such adjustment would require an increase or decrease of at least one percent of such rate, provided that any adjustment that would otherwise be made will be carried forward and taken into account in the computation of any subsequent adjustment.

Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of a Holder of a Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Securities or such holder of shares of Common Stock

issued upon conversion of Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

The Holder of this Security [IF THIS SECURITY IS A GLOBAL SECURITY, THEN INSERT--(INCLUDING ANY PERSON THAT HAS A BENEFICIAL INTEREST IN THIS SECURITY)] and the Common Stock issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement, dated as of \_\_\_\_\_, 2002 (the "Registration Rights Agreement"), executed by the Company. Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of Registered Securities and the Common Stock issuable upon conversion thereof, in each case, that are Registrable Securities, at the Company's expense, (a) to file on or before 90 days after the first date of original issuance of the Securities, a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Registrable Securities, (b) thereafter to use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission on or before 180 days after the first date of original issuance of the Securities, subject to the Company's right to postpone having the Shelf Registration Statement declared effective for an additional 60 days in limited

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circumstances described in the Registration Rights Agreement, and (c) to use its reasonable best efforts to maintain such Shelf Registration Statement continuously effective under the Securities Act until the earlier of (1) the sale under the Shelf Registration Statement of all the Registrable Securities registered thereunder and (2) the expiration of the holding period applicable to such Registrable Securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act or any successor previously subject to specific permitted exceptions. The Company is required to pay Liquidated Damages to holders of Registrable Securities for failure to comply with the foregoing registration obligations, all as more fully set forth in the Registration Rights Agreement.

Whenever in this Security there is a reference, in any context, to the payment of the principal of, premium, if any, or interest on, or in respect of, any Security such mention shall be deemed to include mention of the payment of Liquidated Damages payable as described in the Registration Rights Agreement to the extent that, in such context, Liquidated Damages are, were or would be payable in respect of this Security pursuant to the Registration Rights Agreement, and an express mention of the payment of Liquidated Damages (if applicable) in any provisions of this Security shall not be construed as excluding Liquidated Damages in those provisions of this Security where such express mention is not made. If the Holder of this Security [IF THIS SECURITY IS A GLOBAL SECURITY, THEN INSERT--(INCLUDING ANY PERSON THAT HAS A BENEFICIAL INTEREST IN THIS SECURITY)] elects to sell this Security pursuant to the Shelf Registration Statement then, by its acceptance hereof, such Holder of this Security agrees to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.

If a Change in Control occurs, the Holder of this Security, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase this Security (or any portion of the principal amount hereof that is equal to U.S.\$1,000 or any greater integral multiple of U.S.\$1,000) for cash at a Repurchase Price equal to 100% of the principal amount thereof plus interest accrued to, but excluding, the Repurchase Date. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the conditions provided in the Indenture, by delivery of shares of Common Stock or in a combination of cash and Common Stock, having a fair market value equal to the Repurchase Price. For purposes of this paragraph, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the high and low sales price per share for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date. Whenever in this Security there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price



payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Security shall not be construed as excluding the Repurchase Price so payable in those provisions of this Security when such express mention is not made; provided, however, that, for the purposes of the paragraph below concerning the

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consequences of an Event of Default, such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

[THE FOLLOWING PARAGRAPH SHALL APPEAR IN EACH REGISTERED SECURITY THAT IS NOT A GLOBAL SECURITY:

IN THE EVENT OF REDEMPTION, REPURCHASE OR CONVERSION OF THIS SECURITY IN PART ONLY, A NEW REGISTERED SECURITY OR REGISTERED SECURITIES FOR THE UNREDEEMED, UNREPURCHASED OR UNCONVERTED PORTION HEREOF WILL BE ISSUED IN THE NAME OF THE HOLDER HEREOF.]

[THE FOLLOWING PARAGRAPH SHALL APPEAR IN EACH GLOBAL SECURITY:

IN THE EVENT OF A DEPOSIT OR WITHDRAWAL OF AN INTEREST IN THIS SECURITY, INCLUDING AN EXCHANGE, TRANSFER, REDEMPTION, REPURCHASE OR CONVERSION OF THIS SECURITY IN PART ONLY, THE TRUSTEE, AS CUSTODIAN OF THE DEPOSITARY, SHALL MAKE AN ADJUSTMENT ON ITS RECORDS TO REFLECT SUCH DEPOSIT OR WITHDRAWAL IN ACCORDANCE WITH THE APPLICABLE PROCEDURES.]

The indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full in cash or Cash Equivalents of all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same,

(a) agrees to and shall be bound by such provisions,

(b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and

(c) appoints the Trustee his attorney-in-fact for any and all such purposes.

If an Event of Default shall occur and be continuing, the principal of all the Securities, together with accrued interest to the date of declaration, may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable, together with accrued interest to the date of declaration, and (ii) of interest on any overdue principal and, to the extent permitted by applicable law, overdue interest, all of the Company's obligations in respect of the payment of the principal of and interest on the Securities shall terminate.

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 Securities under the Indenture at any time by the Company and the Trustee with the written consent of the Holders of a majority in principal amount of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the

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Holders of all the Securities, 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 Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or

such other Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, the Trustee shall have failed to institute any such proceeding for 60 days after receipt of such notice, request and offer of indemnity, and the Trustee has not received any direction inconsistent with such written request from the Holders of a majority of the aggregate principal amount of the Outstanding Securities during such 60 day period. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof, premium, if any, Liquidated Damages, if any, or interest hereon on or after the respective due dates expressed herein or for the enforcement of the right to convert this Security as provided in the Indenture.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, Liquidated Damages, if any, and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of Registered Securities is registrable on the Security Register upon surrender of a Registered Security for registration of transfer at the Corporate Trust Office of the Trustee or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate, 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 thereof or his attorney duly authorized in writing, and thereupon one or more new Registered Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees by the Registrar. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to recover any tax or other governmental charge payable in connection therewith.

Prior to due presentation of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in

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whose name such Registered Security is registered as the owner thereof for all purposes, whether or not such Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. The Indenture and this Security shall be governed by and construed in accordance with the laws of the State of New York, United States of America, including, without limitation, Section 5-1401 of the New York General Obligations Law.

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

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## EXHIBIT B

### ELECTION OF HOLDER TO REQUIRE REPURCHASE

1. Pursuant to Section 12.1 of the Indenture, the undersigned hereby



unconverted principal amount to be  
issued:

\_\_\_\_\_  
Social Security or other Taxpayer  
Identification Number, if any

Amount: U.S.\$ \_\_\_\_\_

\_\_\_\_\_  
[Signature Guaranteed]  
</TABLE>

Exhibit 4.4

THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON THE CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THIS NOTE AND ANY CLASS A COMMON SHARES ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON THAT THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT THAT PRIOR TO SUCH TRANSFER PROVIDES TO THE TRUSTEE FOR THE NOTES A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTES (THE FORM OF THE LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THE NOTES), (4) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO SKECHERS U.S.A., INC.) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS NOTE, ANY CLASS A COMMON SHARES ISSUABLE UPON ITS CONVERSION AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON REALES AND OTHER TRANSFERS OF THIS NOTE AND ANY SUCH SHARES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS NOTE AND SUCH SHARES SHALL BE DEEMED BY THE ACCEPTANCE OF THIS NOTE AND ANY SUCH SHARES TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE

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NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

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SKECHERS U.S.A., INC.

4.50% CONVERTIBLE SUBORDINATED NOTE DUE APRIL 15, 2007

NO. 1 U.S. \$75,000,000

CUSIP NO. 830566AA3

Skechers U.S.A., Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company," which term

includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of seventy five million United States Dollars (U.S. \$75,000,000) (which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other Outstanding Securities, shall not exceed \$110,000,000 in the aggregate at any time, unless the Initial Purchaser exercises its over-allotment rights, in which case the principal amount of the Outstanding Securities shall not exceed U.S. \$125,000,000) by adjustments made on the records of the Trustee hereinafter referred to in accordance with the Indenture) on April 15, 2007, unless redeemed or repurchased on an earlier date, and to pay interest thereon, from April 9, 2002, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semiannually in arrears on April 15 and October 15 in each year (each, an "Interest Payment Date"), commencing October 15, 2002, at the rate of 4.50% per annum, until the principal hereof is due, and at the rate then in effect on any overdue principal and premium, if any, and, to the extent permitted by law, on any overdue interest. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the April 1 and October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Company, notice whereof shall be given to Holders of Registered Securities not less than ten days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments of principal shall be made upon the surrender of this Security at the option of the Holder at the Corporate Trust Office or at such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or at such other offices or agencies as the Company may designate, by United States Dollar check drawn on, or wire transfer to, a United States Dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Registered Securities in excess of U.S.\$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date) maintained by the payee. Payment of interest on this Security may

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be made by United States Dollar check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or, upon written application by the Holder to the Security Registrar setting forth wire instructions not later than the relevant Record Date, by wire transfer to a United States dollar account (such a wire transfer to be made only to a Holder of an aggregate principal amount of Registered Securities in excess of U.S.\$2,000,000 and only if such Holder shall have furnished wire instructions in writing to the Trustee no later than 15 days prior to the relevant payment date) maintained by the payee.

Except as specifically provided herein and in the Indenture, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

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

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this

Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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

SKECHERS U.S.A., INC.

By: /s/ MICHAEL GREENBERG

-----  
Name: Michael Greenberg  
Title: President

Attest:

/s/ PHILIP PACCIONE

-----  
Name: Philip Paccione

Dated: April 9, 2002

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee

By: /s/ JEANIE MAR

-----  
Authorized Signatory

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[REVERSE OF NOTE]

This Security is one of a duly authorized issue of securities of the Company designated as its "4.50% Convertible Subordinated Notes due April 15, 2007" (herein called the "Securities"), limited in aggregate principal amount to U.S. \$75,000,000 (U.S. \$90,000,000 if the over-allotment is fully exercised), issued and to be issued under an Indenture, dated as of April 9, 2002 (herein called the "Indenture"), between the Company and Wells Fargo Bank, National Association, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. As provided in the Indenture and subject to certain limitations set forth therein, Registered Securities are exchangeable for a like aggregate principal amount of Registered Securities of any authorized denominations as requested by the Holder surrendering the same upon surrender of the Registered Security or Registered Securities to be exchanged at the Corporate Trust Office. The Trustee upon such surrender by the Holder will issue the new Registered Securities in the requested denominations.

No sinking fund is provided for the Securities.

The Securities are subject to redemption at the option of the Company at any time on or after April 15, 2005, in whole or in part, upon not less than 30 nor more than 60 days' notice to the Holders prior to the Redemption Date at the following Redemption Prices (expressed as percentages of the principal amount) for the twelve-month period beginning on April 15 of the following years (April 15, 2005 through April 15, 2006 in the case of the first of such periods):

<TABLE>  
<CAPTION>

YEAR	REDEMPTION PRICE
2005.....	101.80%
2006.....	100.90%

</TABLE>

and thereafter at a Redemption Price equal to 100% of the principal amount, together, in each case, with accrued interest to, but excluding the Redemption Date; provided, however, that interest installments on Securities whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

The Securities are subject to redemption at the option of the Company at any time before April 15, 2005 ("Provisional Redemption"), in whole or in part, upon not less than 30 nor more than 60 days' notice to the Holders prior to the Redemption Date at a Redemption Price equal to 100% of the principal amount, together, in each case, with accrued interest and Liquidated Damages, if any, to, but excluding, the Redemption Date, if (a) the closing price of the Company's Common Stock has exceeded 150% of the Conversion Price then in effect for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day

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immediately before the date of mailing of the notice of the Provisional Redemption, and (b) the Shelf Registration Statement is effective and available for use and is expected to remain effective and available for use for the 30 days following the Redemption Date, unless registration is no longer required. Upon any Provisional Redemption, the Company will pay to the Holders cash or Common Stock, or in a combination of cash and Common Stock, with respect to the Securities called for Provisional Redemption, and previously converted after the notice of Provisional Redemption and before to the date of the Provisional Redemption, in an amount equal to \$135.00 per \$1,000 principal amount of the Securities, less the amount of any interest paid on the Securities before the date of the Provisional Redemption. For purposes of any such payment in Common Stock, the value of such Common Stock will be at 95% of the average of the closing sales prices of the Company's Common Stock for each of the five trading days ending with the third trading day immediately prior to the Redemption Date.

In the event of a redemption of the Securities, the Company will not be required (a) to register the transfer or exchange of Registered Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption (it being understood that the Company will not be required to identify the serial numbers of Outstanding Securities if all such Securities are called for redemption) or (b) to register the transfer or exchange of any Registered Security, or portion thereof, called for redemption.

Notice to the Holders will be given not less than 30 nor more than 60 days prior to the Redemption Date as provided in the Indenture.

In any case where the due date for the payment of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Security or the last day on which a Holder of a Security has a right to convert his Security shall be, at any Place of Payment or Place of Conversion, as the case may be, a day on which banking institutions at such Place of Payment or Place of Conversion are authorized or obligated by law or executive order to close, then payment of principal, premium, if any, Liquidated Damages, if any, or interest or delivery for conversion of such Security need not be made on or by such date at such place but may be made on or by the next succeeding day at such place which is not a day on which banking institutions are authorized or obligated by law or executive order to close, with the same force and effect as if made on the date for such payment or the date fixed for redemption or repurchase, or by such last day for conversion, and no interest shall accrue on the amount so payable for the period from and after such due date.



Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time following the original issue date of the Securities and on or before the close of business on April 15, 2007, or in case this Security or a portion hereof is called for redemption or the Holder hereof has exercised his right to require the Company to repurchase this Security or such portion hereof, then in respect of this Security until and including, but (unless the Company defaults in making the payment due upon redemption or repurchase, as the case may be) not after, the close of business on the Business Day immediately preceding the Redemption Date or the Repurchase Date, as the case may be, to convert this Security or any portion of the principal amount hereof that is an integral multiple of U.S.\$1,000 (provided that the unconverted portion of such principal amount is U.S.\$1,000 or any integral

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multiple of U.S.\$1,000 in excess thereof) into fully paid and nonassessable shares of Common Stock of the Company at an initial Conversion Rate of 38.5089 (or at the current adjusted Conversion Rate if an adjustment has been made as provided in the Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank and, in case such surrender shall be made during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date (except if this Security has been called for redemption on a Redemption Date or is repurchasable on a Repurchase Date, with the consequence that the conversion right of such Security would terminate between such Regular Record Date and the close of business on such Interest Payment Date), also accompanied by payment in New York Clearing House or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted, and also the conversion notice hereon duly executed, to the Company at the Corporate Trust Office, or at such other office or agency of the Company, subject to any laws or regulations applicable thereto and subject to the right of the Company to terminate the appointment of any Conversion Agent (as defined below) as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate (each a "Conversion Agent"), provided, further, that in case surrender of this Security for conversion shall be made during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date and if this Security or portion hereof has been called for redemption on a Redemption Date or is repurchasable on a Repurchase Date, with the consequence that the conversion right of such Security would terminate between such Regular Record Date and the close of business on such Interest Payment Date, then the Holder of this Security will be entitled to receive the interest accruing hereon from the Interest Payment Date next preceding the date of such conversion to such succeeding Interest Payment Date and shall not be required to pay such interest upon surrender of this Security for conversion. Subject to the provisions of the preceding sentence and, in the case of a conversion after the close of business on the Regular Record Date next preceding any Interest Payment Date and on or before the close of business on such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security of record as of such Regular Record Date) to receive the related installment of interest to the extent and under the circumstances provided in the Indenture, no cash payment or adjustment is to be made on conversion for interest accrued hereon from the Interest Payment Date next preceding the day of conversion, or for dividends on the Common Stock issued on conversion hereof. The Company shall thereafter deliver to the Holder the fixed number of shares of Common Stock (together with any cash adjustment or rights or warrants, as provided in the Indenture) into which this Security is convertible and such delivery will be deemed to satisfy the Company's obligation to pay the principal amount of this Security. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest (calculated to the nearest 1/100th of a share) the Company shall pay a cash adjustment as provided in the Indenture. The Conversion Rate is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the conveyance, transfer, sale or lease of all or substantially all of the property and assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then Outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of

property receivable upon such consolidation, merger, conveyance, transfer, sale or lease by a holder of the number of shares of Common Stock of the Company into which this Security could have been converted immediately prior to such consolidation, merger, conveyance, transfer, sale or lease (assuming such holder of Common Stock is not a Constituent Person, failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of Non-electing Shares). No adjustment in the Conversion Rate will be made until such adjustment would require an increase or decrease of at least one percent of such rate, provided that any adjustment that would otherwise be made will be carried forward and taken into account in the computation of any subsequent adjustment.

Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of a Holder of a Security or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Securities or such holder of shares of Common Stock issued upon conversion of Securities, or to a prospective purchaser of any such security designated by any such Holder or holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d) (4) under the Securities Act (or any successor provision thereto).

The Holder of this Security (including any Person that has a beneficial interest in this Security) and the Common Stock issuable upon conversion hereof is entitled to the benefits of a Registration Rights Agreement, dated as of April 9, 2002 (the "Registration Rights Agreement"), executed by the Company. Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of Registered Securities and the Common Stock issuable upon conversion thereof, in each case, that are Registrable Securities, at the Company's expense, (a) to file on or before 90 days after the first date of original issuance of the Securities, a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Registrable Securities, (b) thereafter to use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the Commission on or before 180 days after the first date of original issuance of the Securities, subject to the Company's right to postpone having the Shelf Registration Statement declared effective for an additional 60 days in limited circumstances described in the Registration Rights Agreement, and (c) to use its reasonable best efforts to maintain such Shelf Registration Statement continuously effective under the Securities Act until the earlier of (1) the sale under the Shelf Registration Statement of all the Registrable Securities registered thereunder and (2) the expiration of the holding period applicable to such Registrable Securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act or any successor previously subject to specific permitted exceptions. The Company is required to pay Liquidated Damages to holders of Registrable Securities for failure to comply with the foregoing registration obligations, all as more fully set forth in the Registration Rights Agreement.

Whenever in this Security there is a reference, in any context, to the payment of the principal of, premium, if any, or interest on, or in respect of, any Security such mention shall

be deemed to include mention of the payment of Liquidated Damages payable as described in the Registration Rights Agreement to the extent that, in such context, Liquidated Damages are, were or would be payable in respect of this Security pursuant to the Registration Rights Agreement, and an express mention of the payment of Liquidated Damages (if applicable) in any provisions of this Security shall not be construed as excluding Liquidated Damages in those

provisions of this Security where such express mention is not made. If the Holder of this Security (including any Person that has a beneficial interest in this Security) elects to sell this Security pursuant to the Shelf Registration Statement then, by its acceptance hereof, such Holder of this Security agrees to be bound by the terms of the Registration Rights Agreement relating to the Registrable Securities which are the subject of such election.

If a Change in Control occurs, the Holder of this Security, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase this Security (or any portion of the principal amount hereof that is equal to U.S.\$1,000 or any greater integral multiple of U.S.\$1,000) for cash at a Repurchase Price equal to 100% of the principal amount thereof plus interest accrued to, but excluding, the Repurchase Date. At the option of the Company, the Repurchase Price may be paid in cash or, subject to the conditions provided in the Indenture, by delivery of shares of Common Stock or in a combination of cash and Common Stock, having a fair market value equal to the Repurchase Price. For purposes of this paragraph, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the high and low sales price per share for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date. Whenever in this Security there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Security shall not be construed as excluding the Repurchase Price so payable in those provisions of this Security when such express mention is not made; provided, however, that, for the purposes of the paragraph below concerning the consequences of an Event of Default, such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, redemption, repurchase or conversion of this Security in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the Applicable Procedures.

The indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full in cash or Cash Equivalents of all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same,

(a) agrees to and shall be bound by such provisions,

(b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and

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(c) appoints the Trustee his attorney-in-fact for any and all such purposes.

If an Event of Default shall occur and be continuing, the principal of all the Securities, together with accrued interest to the date of declaration, may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable, together with accrued interest to the date of declaration, and (ii) of interest on any overdue principal and, to the extent permitted by applicable law, overdue interest, all of the Company's obligations in respect of the payment of the principal of and interest on the Securities shall terminate.

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 Securities under the Indenture at any time by the Company and the Trustee with the written consent of the Holders of a majority in principal amount of the Securities at the time Outstanding. The

Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, 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 Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, the Trustee shall have failed to institute any such proceeding for 60 days after receipt of such notice, request and offer of indemnity, and the Trustee has not received any direction inconsistent with such written request from the Holders of a majority of the aggregate principal amount of the Outstanding Securities during such 60 day period. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof, premium, if any, Liquidated Damages, if any, or interest hereon on or after the respective due dates expressed herein or for the enforcement of the right to convert this Security as provided in the Indenture.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, Liquidated Damages, if any, and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of Registered Securities is registrable on the Security Register upon surrender of a Registered Security for registration of transfer at the Corporate Trust Office of the Trustee or at

such other office or agency of the Company as may be designated by it for such purpose in the Borough of Manhattan, The City of New York, or at such other offices or agencies as the Company may designate, 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 thereof or his attorney duly authorized in writing, and thereupon one or more new Registered Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees by the Registrar. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to recover any tax or other governmental charge payable in connection therewith.

Prior to due presentation of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered as the owner thereof for all purposes, whether or not such Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months. The Indenture and this Security shall be governed by and construed in accordance with the laws of the State of New York, United States of America, including, without limitation, Section 5-1401 of the New York General Obligations Law.

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



EXHIBIT 4.5

SKECHERS U.S.A., INC.

4.50% CONVERTIBLE SUBORDINATED NOTES DUE 2007

REGISTRATION RIGHTS AGREEMENT

April 9, 2002

CIBC World Markets Corp.  
One World Financial Center  
New York, New York 10281

Ladies and Gentlemen:

Skechers U.S.A., Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the Purchaser (as defined herein) upon the terms set forth in the Purchase Agreement (as defined herein) its 4.50% Convertible Subordinated Notes due 2007 (the "Securities"). As an inducement to the Purchaser to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Purchaser thereunder, the Company agrees with the Purchaser for the benefit of holders (as defined herein) from time to time of the Registrable Securities (as defined herein) as follows:

1. Definitions.

(a) Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement. As used in this Registration Rights Agreement (the "Agreement"), the following defined terms shall have the following meanings:

"Affiliate" of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

"Commission" means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.

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"Class A Common Stock" means the Company's Class A common stock, \$0.001 par value per share.

"DTC" means The Depository Trust Company.

"Effectiveness Period" has the meaning assigned thereto in Section 2(b)(i) hereof.

"Effective Time" means the date on which the Commission declares the Shelf Registration Statement effective or on which the Shelf Registration Statement otherwise becomes effective.

"Electing Holder" has the meaning assigned thereto in Section 3(a)(iii) hereof.

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

The term "holder" means, when used with respect to any Security, the Holder (as defined in the Indenture) and, with respect to any Class A Common Stock, the record holder of such Class A Common Stock.

"Indenture" means the Indenture, dated as of April 9, 2002, between the Company and Wells Fargo Bank Minnesota, N.A., as Amended and supplemented from time to time in accordance with its terms.

"Managing Underwriters" means the investment banker or investment bankers and manager or managers that shall administer an underwritten offering, if any, conducted pursuant to Section 7 hereof.

"NASD Rules" means the rules of the National Association of Securities Dealers, Inc., as amended from time to time.

"Notice and Questionnaire" means a Notice of Registration Statement and Selling Securityholder Questionnaire, substantially in the form of Exhibit A attached hereto, relating to the Securities.

The term "person" means an individual, partnership, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Prospectus" means the prospectus (including, without limitation, any preliminary prospectus, any final prospectus and any prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Securities Act) included in the Shelf Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement and by all other amendments and supplements to such prospectus, including all material incorporated by

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reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

"Purchase Agreement" means the Purchase Agreement, dated as of April 4, 2002, between the Company and the Purchaser.

"Purchaser" means the CIBC World Markets Corp.

"Registrable Securities" means all or any portion of the Securities issued from time to time under the Indenture and the shares of Class A Common Stock issuable upon conversion of such Securities; provided, however, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

"Restricted Security" means any Security or share of Class A Common Stock issuable upon conversion thereof except any such Security or share of Class A Common Stock that (i) has been registered pursuant to an effective registration statement under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto) or (iii) has otherwise been transferred and a new Security or share of Class A Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section 2.6 of the Indenture.

"Rules and Regulations" means the published rules and regulations of the Commission promulgated under the Securities Act or the Exchange Act, as in effect at any relevant time.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Shelf Registration" means a registration effected pursuant to Section 2 hereof.

"Shelf Registration Statement" means a "shelf" registration statement filed under the Securities Act providing for the registration of, and the sale on a continuous or delayed basis by the holders of, all of the Registrable

Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"Trust Indenture Act" means the Trust Indenture Act of 1939, or any successor thereto, and the rules, regulations and forms promulgated thereunder, as the same shall be amended from time to time.

The term "underwriter" means any underwriter of Registrable Securities in connection with an offering thereof under a Shelf Registration Statement.

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(b) Wherever there is a reference in this Agreement to a percentage of the "principal amount" of Registrable Securities or to a percentage of Registrable Securities, Class A Common Stock shall be treated as representing the principal amount of Securities which was surrendered for conversion or exchange in order to receive such number of shares of Class A Common Stock.

## 2. Shelf Registration.

(a) The Company shall, on or prior to 90 calendar days after the Closing Date (as defined in the Purchase Agreement), file with the Commission a Shelf Registration Statement relating to the offer and sale of the Registrable Securities and, thereafter, shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the Securities Act on or prior to 180 calendar days after the Closing Date; provided, however, that no holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement or to use the Prospectus for resales of Registrable Securities unless such holder is an Electing Holder (as defined herein).

(b) The Company shall use its reasonable best efforts:

(i) to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus to be usable by holders for resales of Registrable Securities until the earlier of (A) the date on which there are no outstanding Registrable Securities and (B) the expiration of the holding period applicable to such Registrable Securities held by persons that are not affiliates of the Company under Rule 144(k) of the Securities Act or any successor previously subject to specific permitted exceptions (such period being referred to herein as the "Effectiveness Period");

(ii) after the Effective Time, promptly upon the request of any holder of Registrable Securities that is not then an Electing Holder, to take any action reasonably necessary to enable such holder to use the Prospectus for resales of Registrable Securities, including without limitation any action necessary to identify such holder as a selling securityholder in the Shelf Registration Statement; provided, however, that nothing in this subparagraph shall relieve such holder of the obligation to return a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a) (ii) hereof; and

(iii) if at any time the Securities are convertible into securities other than Class A Common Stock pursuant to Article Ten of the Indenture, the Company shall, or shall cause any successor under the Indenture to, cause such securities to be included in the Shelf Registration Statement no later than the date on which the Securities may then be convertible into such securities.

## 3. Registration Procedures.

(a) In connection with the Shelf Registration Statement, the following provisions shall apply:

(i) Not less than 30 calendar days prior to the Effective Time,  
as



determined by the Company in good faith, the Company shall mail the Notice and Questionnaire to the holders of Registrable Securities. No holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Time, and no holder shall be entitled to use the Prospectus for offers of Registrable Securities at any time unless such holder has returned a completed and signed Notice and Questionnaire to the Company by the deadline for response set forth therein; provided, however, holders of Registrable Securities shall have at least 20 calendar days from the date on which the Notice and Questionnaire is first mailed to such holders to return a completed and signed Notice and Questionnaire to the Company.

(ii) After the Effective Time, the Company shall, upon the request of any holder of Registrable Securities that is not then an Electing Holder, promptly send a Notice and Questionnaire to such holder. The Company shall not be required to take any action to name such holder as a selling securityholder in the Shelf Registration Statement or to enable such holder to use the Prospectus for resales of Registrable Securities until such holder has returned a completed and signed Notice and Questionnaire to the Company.

(iii) The term "Electing Holder" shall mean any holder of Registrable Securities that has returned a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(i) or 3(a)(ii) hereof.

(b) The Company shall furnish to each Electing Holder, counsel to the Electing Holders, and the Managing Underwriters, if any, no fewer than five Business Days prior to the initial filing of the Shelf Registration Statement, a copy of such Shelf Registration Statement, and shall furnish to such holders, counsel to such holders, and the Managing Underwriters, if any, no fewer than two Business Days prior to the filing of any amendment or supplement to the Prospectus, a copy of such amendment or supplement and shall use all reasonable efforts to reflect in each such document when so filed with the Commission such comments as such holders and their respective counsel reasonably may propose; provided, however, that the Company shall make the final decision as to the form and content of each such document. If any such Shelf Registration Statement refers to any Electing Holder by name or otherwise as the holder of any securities of the Company, then such Electing Holder shall have the right to require (i) the insertion therein of language, in form and substance reasonably satisfactory to such Electing Holder, to the effect that the holding by such Electing Holder of such securities is not to be construed as a recommendation by such Electing Holder of the investment quality of the Company's securities covered thereby and that such holding does not imply that such Electing Holder will assist in meeting any future financial requirements of the Company or (ii) in the event that such reference to such Electing Holder by name or otherwise is not required by the Securities Act or any similar Federal statute then in force, the deletion of the reference to such Electing Holder in any amendment or supplement to the Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

(c) From the date hereof until the end of the Effective Period, the Company shall (subject to paragraph (j) below) promptly take such action as may be necessary so that (i) each of the Shelf Registration Statement and any amendment thereto and the Prospectus and any amendment or supplement thereto (and each report or other document incorporated by reference

therein in each case) complies in all material respects with the Securities Act and the Exchange Act and the respective rules and regulations thereunder, (ii) each of the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and (iii) each of the Prospectus and any amendment or supplement to the Prospectus does not at any time during the Effectiveness Period include an untrue statement of a material fact or omit to state a

material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall promptly advise each Electing Holder, and shall confirm such advice in writing if so requested by any such holder (which notice pursuant to clauses (ii) through (iv) hereof shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made):

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

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

(iii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included in the Shelf Registration Statement for sale in any jurisdiction or the initiation of any proceeding for such purpose; and

(iv) if changes in the Shelf Registration Statement or the Prospectus are required in order that the Shelf Registration Statement and Prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading.

(e) The Company shall use all reasonable efforts to prevent the issuance, and if issued to obtain the withdrawal, of any order suspending the effectiveness of the Shelf Registration Statement at the earliest possible time.

(f) The Company shall furnish to each requesting Electing Holder, without charge, at least one copy of the Shelf Registration Statement and all post-effective amendments thereto, including financial statements and schedules, and, if such holder so requests in writing, all reports, other documents and exhibits that are filed with or incorporated by reference in the Shelf Registration Statement.

(g) The Company shall, during the Effectiveness Period, deliver to each Electing Holder, without charge, as many copies of the Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto as such Electing Holder may reasonably request; and the Company consents (except during the continuance of any event described in

Section 3(d)(iv) above) to the use of the Prospectus and any amendment or supplement thereto by each of the Electing Holders in connection with the offering and sale of the Registrable Securities covered by the Prospectus and any amendment or supplement thereto during the Effectiveness Period.

(h) Prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company shall (i) register or qualify or cooperate with the Electing Holders and a single counsel for the Electing Holders in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as any Electing Holder may reasonably request, (ii) keep such registrations or qualifications in effect and comply with such laws so as to permit the continuance of offers and sales in such jurisdictions for so long as may be necessary to enable any Electing Holder or underwriter, if any, to complete its distribution of Registrable Securities pursuant to the Shelf Registration Statement, and (iii) take any and all other actions necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities; provided, however, that in no event shall the Company be obligated to (A) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify but for this Section 3(h) or (B) file any general consent to service of

process in any jurisdiction where it is not as of the date hereof so subject.

(i) The Company shall cooperate with the Electing Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Shelf Registration Statement, which certificates shall not bear any restrictive legends and, if so required by any securities exchange upon which any Registrable Securities are listed, shall be panned, lithographed or engraved, or produced by any combination of such methods, on steel engraved borders, and which certificates shall be free of any restrictive legends and in such permitted denominations and registered in such names as Electing Holders may request in connection with the sale of Registrable Securities pursuant to the Shelf Registration Statement.

(j) Upon the occurrence of any fact or event contemplated by paragraph 3(d)(iv) above, the Company shall (subject to the next sentence) promptly prepare a post-effective amendment or supplement to the Shelf Registration Statement or the Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company notifies the Electing Holders in accordance with clauses (ii) through (iv) of paragraph 3(d) above to suspend the use of the Prospectus until the requisite changes to the Prospectus have been made, then each Electing Holder shall suspend the use of the Prospectus and keep the notification provided pursuant to paragraph 3(d) above confidential until (i) such Electing Holder has received copies of the supplemented or amended Prospectus contemplated by the preceding sentence or (ii) such Electing Holder is advised in writing by the Company that the use of the Prospectus may be resumed and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus. Notwithstanding the foregoing, but subject to Section 7 hereof, the Company shall not be required to amend or supplement the Shelf Registration Statement, any related Prospectus or any

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document incorporated by reference for a period not to exceed 60 consecutive days if the Company is in possession of material non-public information the disclosure of which would have a material adverse effect on the business, operations, prospects, condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole.

(k) Not later than the Effective Time, the Company shall provide a CUSIP number for the Registrable Securities that are debt securities.

(l) The Company shall use all reasonable efforts to comply with all applicable Rules and Regulations, and to make generally available to its securityholders as soon as practicable, but in any event not later than eighteen months after (i) the effective date (as defined in Rule 158(c) under the Securities Act) of the Shelf Registration Statement, (ii) the effective date of each post-effective amendment to the Shelf Registration Statement, and (iii) the date of each filing by the Company with the Commission of an Annual Report on Form 10-K that is incorporated by reference in the Shelf Registration Statement, an earnings statement of the Company and its subsidiaries complying with Section 11(a) of the Securities Act and the Rules and Regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(m) Not later than the Effective Time, the Company shall cause the Indenture to be qualified under the Trust Indenture Act; in connection with such qualification, the Company shall cooperate with the Trustee under the Indenture and the Holders (as defined in the Indenture) to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and the Company shall execute, and shall use all reasonable efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner. In the event that any such amendment or modification referred to in this Section 3(m) involves the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) In the event of an underwritten offering conducted pursuant to Section 7 hereof, the Company shall (subject to paragraph 3(j) above), if requested, promptly include or incorporate in a Prospectus supplement or post-effective amendment to the Shelf Registration Statement such information as the Managing Underwriters reasonably agree should be included therein and to which the Company does not reasonably object and shall (subject to paragraph 3(j) above) make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post-effective amendment.

(o) The Company shall enter into such customary agreements (including an underwriting agreement in customary form in the event of an underwritten offering conducted pursuant to Section 7 hereof) and take all other appropriate action in order to expedite and facilitate the registration and disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures substantially identical to those set forth in Section 5 hereof with respect to all parties to be indemnified pursuant to Section 5 hereof; provided,

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however, the Company shall not be required to facilitate an underwritten offering pursuant to the Shelf Registration Statement by any holders unless the offering relates to at least \$15,000,000 principal amount of Securities or the equivalent number of shares of Class A Common Stock in which such Securities are convertible.

(p) The Company shall:

(i) (A) make reasonably available for inspection by requesting Electing Holders, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney selected in accordance with Section 4(b) hereof, one accountant and any other agent retained by such holders or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries and (B) cause the Company's officers, directors and employees to supply all information reasonably requested by such holders or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as is customary for similar due diligence examinations; provided, however, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential shall be kept confidential by such holders and any such underwriter, attorney, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such records, information or documents become available to the public generally or through a third party without an accompanying obligation of confidentiality; and provided further that, if the foregoing inspection and information gathering would otherwise disrupt the Company's conduct of its business, such inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of the requesting Electing Holders and the other parties entitled thereto by one counsel designated by and on behalf of Electing Holders and other parties;

(ii) in connection with any underwritten offering conducted pursuant to Section 7 hereof, make such representations and warranties to the Electing Holders participating in such underwritten offering and to the Managing Underwriters, in form, substance and scope as are customarily made by the Company to underwriters in primary underwritten offerings of equity and convertible debt securities;

(iii) in connection with any underwritten offering conducted pursuant to Section 7 hereof, obtain opinions of counsel to the Company (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters) addressed to each requesting Electing Holder, covering such matters as are customarily covered in opinions requested in primary underwritten offerings of equity and convertible debt securities and such other matters as may be reasonably requested by such Electing Holders and underwriters (it being agreed that the matters to be covered by such opinions shall include,

without limitation, as of the date of the opinion and as of the Effective Time or the date of the most recent post-effective amendment thereto, as the case may be, the absence from the Shelf Registration Statement and the Prospectus, including the documents incorporated by reference therein, of an untrue statement of a material fact or the omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances

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under which they were made) not misleading);

(iv) in connection with any underwritten offering conducted pursuant to Section 7 hereof, obtain "cold comfort" letters and updates thereof from the independent public accountants of the Company (and, if necessary, from the independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Shelf Registration Statement), addressed to each requesting Electing Holder (if such Electing Holder has provided such letter, representations or documentation, if any, required for such cold comfort letter to be so addressed) and the underwriters, in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings;

(v) in connection with any underwritten offering conducted pursuant to Section 7 hereof, deliver such documents and certificates as may be reasonably requested by any Electing Holders and the Managing Underwriters, if any, including without limitation certificates to evidence compliance with Section 3(j) hereof and with any conditions contained in the underwriting agreement or other agreements entered into by the Company.

(q) The Company will use all reasonable efforts to cause the Class A Common Stock issuable upon conversion of the Securities to be listed for quotation on the New York Stock Exchange or other stock exchange or trading system, if any, on which the Class A Common Stock primarily trades on or prior to the Effective Time.

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

#### 4. Registration Expenses.

(a) All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by it whether or not any Shelf Registration Statement is filed or becomes effective and whether or not any securities are issued or sold pursuant to any Shelf Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including without limitation fees and expenses (A) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (B) in compliance with securities or Blue Sky laws (including without limitation and in addition to that provided for in (b) below, reasonable fees and disbursements of counsel for the underwriters or counsel for the holders of Registrable Securities in connection with Blue Sky qualifications of the Registrable Securities)), (ii) printing expenses (including without limitation expenses of printing certificates for Registrable Securities in a form eligible for deposit with DTC and of printing Prospectuses if the printing of Prospectuses is requested by the Managing Underwriters, if any), (iii) messenger, telephone and delivery expenses, (iv) in the event of an underwritten offering of Registrable Securities conducted pursuant to Section 7 hereof, or if in any other event the Company requires that inspection and information gathering be coordinated by counsel for the Electing Holders as

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provided in Section 3(p)(i) hereof, the Company shall pay the fees and

disbursements of counsel for the Company and one counsel for the holders of Registrable Securities, in accordance with the provisions of Section 4(b) hereof, (v) fees and disbursements of all independent certified public accountants referred to in Section 3(p)(iv) hereof (including without limitation the expenses of any special audit and "cold comfort" letters required by or incident to such performance), (vi) Securities Act liability insurance, if the Company desires such insurance, and (vii) fees and expenses of all other persons retained by the Company. In addition, the Company shall pay its internal expenses (including without limitation all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, and the fees and expenses incurred in connection with the listing of the securities on the New York Stock Exchange. Notwithstanding the foregoing or anything in this Agreement to the contrary, each holder of the Registrable Securities being registered shall pay all commissions, placement agent fees and underwriting discounts and commissions with respect to any Registrable Securities sold by it and the fees and disbursements of any counsel or other advisors or experts retained by such holders (severally or jointly), other than counsel and local counsel referred to in clause (iv) above.

(b) In connection with any registration hereunder, the Company shall reimburse the holders of the Registrable Securities being registered in such registration for the reasonable fees and disbursements of not more than one counsel chosen by the holders of a majority in amount of the Registrable Securities (determined on a fully converted basis) for whose benefit the applicable Shelf Registration Statement is being prepared.

## 5. Indemnification and Contribution.

(a) Indemnification by the Company. Upon the registration of the Registrable Securities pursuant to Section 2 hereof, the Company shall indemnify and hold harmless each Electing Holder and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each person who controls such Electing Holder, underwriter, selling agent or other securities professional within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such person being sometimes referred to as an "Indemnified Person") against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement or any Prospectus contained therein or furnished by the Company to any Indemnified Person, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and the Company hereby agrees to reimburse such Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Shelf Registration Statement or Prospectus, or amendment or supplement thereto, in reliance upon and in conformity with

written information furnished to the Company by or on behalf of such Indemnified Person expressly for use therein; provided, further, however, that the foregoing indemnity agreement with respect to any preliminary Prospectus shall not inure to the benefit of any Indemnified Person who failed to deliver a final Prospectus (as then amended or supplemented, provided by the Company to the several Indemnified Persons in the requisite quantity and on a timely basis to permit proper delivery on or prior to the relevant transaction date) to the person asserting any losses, claims, damages and liabilities and judgments caused by any untrue statement or alleged untrue statement of a material fact contained in any preliminary Prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, if such material misstatement or omission

or alleged material misstatement or omission was cured in the final Prospectus.

(b) Indemnification by the Holders and any Agents and Underwriters. Each Electing Holder agrees, as a consequence of the inclusion of any of such holder's Registrable Securities in any Shelf Registration Statement, and each underwriter, selling agent or other securities professional, if any, which facilitates the disposition of Registrable Securities shall agree, as a consequence of facilitating such disposition of Registrable Securities, severally and not jointly, to (i) indemnify and hold harmless the Company, its directors and executive officers who sign such Shelf Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in such Shelf Registration Statement or Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such holder, underwriter, selling agent or other securities professional expressly for use therein and (ii) reimburse the Company and its directors and officers who sign such Shelf Registration Statement for any legal or other expenses reasonably incurred by the Company and such directors and officers in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Notices of Claims, Etc. Promptly after receipt by an indemnified party under subsection (a) or (b) of this Section 5 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under this Section 5, notify such indemnifying party in writing of the commencement thereof; but the omission to so notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under this Section 5. In the case that any such action is brought against any indemnified party it shall notify the indemnifying party of the commencement thereof and such indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and,

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after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, such indemnifying party shall not be liable to such indemnified party under this Section 5 for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, which consent will not be unreasonably withheld, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) Contribution. If the indemnification provided for in this Section 5 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) of this Section 5 in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified

party in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or by such indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation (even if the Electing Holders or any underwriters, selling agents or other securities professionals or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 5(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Electing Holders and any underwriters, selling agents or other securities professionals in this Section 5(d) to contribute shall be several in proportion to the percentage of principal amount of Registrable Securities registered or underwritten, as the case may be, by them and not joint.

(e) Notwithstanding any other provision of this Section 5, in no event will any (i) Electing Holder be required to undertake liability to any person under this Section 5 for any amounts in excess of the dollar amount of the proceeds to be received by such holder from the sale of such holder's Registrable Securities (after deducting any fees, discounts and commissions

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applicable thereto) pursuant to any Shelf Registration Statement and (ii) underwriter, selling agent or other securities professional be required to undertake liability to any person hereunder for any amounts in excess of the discount, commission or other compensation payable to such underwriter, selling agent or other securities professional with respect to the Registrable Securities underwritten by it and distributed to the public.

(f) The obligations of the Company under this Section 5 shall be in addition to any liability that the Company may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 5 shall be in addition to any liability that such Indemnified Person may otherwise have to the Company. The remedies provided in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to an indemnified party at law or in equity.

6. Liquidated Damages. If (i) on or prior to 90 days after the Closing Date, a Shelf Registration Statement has not been filed with the Commission, (ii) on or prior to 180 days after the Closing Date, such Shelf Registration Statement is not declared effective or, (iii) the Shelf Registration Statement ceases to be effective or the Company otherwise prevents or restricts the Electing Holders from making sales of Registrable Securities under such Shelf Registration Statement during the Effectiveness Period for a period in excess of 60 consecutive days (each, a "Registration Default"), liquidated damages ("Liquidated Damages") will accrue on the Registrable Securities at a rate equal to 0.5% of the principal amount of Registrable Securities per annum from and including the day following such Registration Default to, but excluding, the day on which such Registration Default is cured. The Company shall notify the Trustee as promptly as possible, but in no event more than three Business Days after each and every date on which a Registration Default occurs. Liquidated Damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first Interest Payment Date in respect of the Registrable Securities following the date on which such Liquidated Damages begin to accrue.

7. Underwritten Offering. Any holder of Registrable Securities who desires to do so may sell Registrable Securities (in whole or in part) in an underwritten offering; provided, however, the Company shall not be required to



facilitate an underwritten offering pursuant to the Shelf Registration Statement by any holders unless the offering relates to at least \$20,000,000 principal amount of Securities or the equivalent number of shares of Class A Common Stock in which such Securities are convertible. In any such underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by, and the underwriting arrangements with respect thereto (including the size of the offering) will be approved by, the holders of a majority of the Registrable Securities to be included in such offering; provided, however, that such investment bankers and managers and underwriting arrangements must be reasonably satisfactory to the Company. No holder may participate in any underwritten offering contemplated hereby unless (a) such holder agrees to sell such holder's Registrable Securities to be included in the underwritten offering in accordance with any approved underwriting arrangements, (b) such holder completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such approved underwriting arrangements and (c) if such holder is not then an Electing Holder, such holder returns a completed and signed Notice and Questionnaire to the Company in accordance with Section 3(a)(ii) hereof within a reasonable amount of time before such underwritten offering. The holders participating in any underwritten

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offering shall be responsible for any underwriting discounts and commissions and fees and, subject to Section 4 hereof, expenses of their own counsel. The Company shall pay all expenses customarily borne by issuers, including but not limited to filing fees, the fees and disbursements of its counsel and independent public accountants and any printing expenses incurred in connection with such underwritten offering. Notwithstanding the foregoing or the provisions of Section 3(n) hereof, upon receipt of a request from the Managing Underwriter or a representative of holders of a majority of the Registrable Securities to be included in an underwritten offering to prepare and file an amendment or supplement to the Shelf Registration Statement and Prospectus in connection with an underwritten offering, the Company may delay the filing of any such amendment or supplement for up to 60 days if the Company is in possession of material non-public information the disclosure of which would have a material adverse effect on the business, operations, prospects, condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole.

#### 8. Rules 144 and 144A.

The Company agrees, for so long as any Registrable Securities remain outstanding and during any period in which the Company (a) is not subject to Section 13 of 15(d) of the Exchange Act, to make available, upon request of any holder of Registrable Securities, to such holder or beneficial owner of Registrable Securities in connection with any sale thereof and any prospective purchaser of such Registrable Securities designated by such holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Registrable Securities pursuant to Rule 144A of the Securities Act, and (b) is subject to Section 13 of 15 (d) of the Exchange Act, to make all filings required thereby in a timely manner in order to permit resales of such Registrable Securities pursuant to Rule 144 of the Securities Act.

#### 9. Miscellaneous.

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

(b) Other Registration Rights. The Company will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

The Company shall not permit any securities other than the Registrable Securities to be included in any Shelf Registration Statement. Except as set forth in the Registration Rights Agreement, dated June 9, 1999 entered into by and among the Company, the Greenberg Family Trust and Michael Greenberg (where such conflict has already been waived), the rights granted to the holders of Registrable Securities hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company's

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securities under any agreement in effect on the date hereof.

(c) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given unless (i) in the case of Section 2 hereof and this Section 9(c)(i), the Company has obtained the written consent of holders of all outstanding Registrable Securities and (ii) in the case of all other provisions hereof, the Company has obtained the written consent of holders of a majority of the outstanding principal amount of Registrable Securities (determined on a fully converted basis) (excluding Registrable Securities held by the Company or its Affiliates). Notwithstanding the foregoing, a waiver or consent to departure from the provisions hereof that relates exclusively to the rights of holders whose Registrable Securities are being sold pursuant to a Shelf Registration Statement and that does not affect directly or indirectly the rights of other holders of Registrable Securities may be given by the holders of a majority of the outstanding principal amount of Registrable Securities (determined on a fully converted basis) being sold by such holders pursuant to such Shelf Registration Statement.

(d) Third Party Beneficiary. The holders of Registrable Securities shall be third party beneficiaries to the agreements made hereunder between the Company, on the one hand, and the Purchaser, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect its rights or the rights of holders of Registrable Securities hereunder.

(e) Notices. All notices and other communications provided for or permitted hereunder shall be given as provided in the Indenture.

(f) Parties in Interest. The parties to this Agreement intend that all holders of Registrable Securities shall be entitled to receive the benefits of this Agreement and that any Electing Holder shall be bound by the terms and provisions of this Agreement by reason of such election with respect to the Registrable Securities that are included in a Shelf Registration Statement. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and any holder from time to time of the Registrable Securities to the aforesaid extent. In the event that any transferee of any holder of Registrable Securities shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing or action of any kind, be entitled to receive the benefits of and, if an Electing Holder, be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement to the aforesaid extent.

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

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

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(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, including without limitation New York General Obligations Law Section 5-1401.

(j) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

(k) Survival. The respective indemnities, agreements, representations, warranties and other provisions set forth in this Agreement or made pursuant hereto shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Electing Holder, any director, officer or partner of such holder, any agent or underwriter, any director, officer or partner of such agent or underwriter, or any controlling person of any of the foregoing, and shall survive the transfer and registration of the Registrable Securities of such holder.

(l) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter hereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted with respect to the Registrable Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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Please confirm by signing in the space provided below that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,

SKECHERS U.S.A., INC.

By: /s/ DAVID WEINBERG

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Name: David Weinberg

Title: Chief Financial Officer

CIBC WORLD MARKETS CORP.

By: /s/ STEVEN H. REINER

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Name: Steven H. Reiner

Title: Executive Director

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EXHIBIT A

SKECHERS U.S.A., INC.

Notice of Registration Statement  
and  
Selling Securityholder Questionnaire

(Date)

Reference is hereby made to the Registration Rights Agreement (the "Registration Rights Agreement") between Skechers U.S.A., Inc. (the "Company") and the Purchaser named therein. Pursuant to the Registration Rights Agreement, the Company has filed with the United States Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Company's 4.50% Convertible Subordinated Notes due 2007 (the "Securities") and the shares of Class A common stock, \$0.001 par value per share (the "Class A Common Stock"), issuable upon conversion thereof. A copy of the Registration Rights Agreement is attached hereto. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities (as defined below) is entitled to have the Registrable Securities beneficially owned by it included in the Shelf Registration Statement. In order to have Registrable Securities included in the Shelf Registration Statement, this Notice of Registration Statement and Selling Securityholder Questionnaire ("Notice and Questionnaire") must be completed, executed and delivered to the Company's counsel at the address set forth herein for receipt ON OR BEFORE [DEADLINE FOR RESPONSE]. Beneficial owners of Registrable Securities who do not complete, execute and return this Notice and Questionnaire by such date (i) will not be named as selling securityholders in the Shelf Registration Statement and (ii) may not use the Prospectus forming a part thereof for resales of Registrable Securities.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and related Prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and related Prospectus.

The term "Registrable Securities" is defined in the Registration Rights Agreement to mean all or any portion of the Securities issued from time to time under the Indenture and the shares of Class A Common Stock issuable upon conversion of such Securities; provided, however, that a security ceases to be a Registrable Security when it is no longer a Restricted Security.

The term "Restricted Security" is defined in the Registration Rights Agreement to mean any Security or share of Class A Common Stock issuable upon conversion thereof except any such Security or share of Class A Common Stock that (i) has been registered pursuant to an

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effective registration statement under the Securities Act and sold in a manner contemplated by the Shelf Registration Statement, (ii) has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or is transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto), or (iii) has otherwise been transferred and a new Security or share of Class A Common Stock not subject to transfer restrictions under the Securities Act has been delivered by or on behalf of the Company in accordance with Section 2.6 of the Indenture.

#### ELECTION

The undersigned holder (the "Selling Securityholder") of Registrable Securities hereby elects to include in the Shelf Registration Statement the Registrable Securities beneficially owned by it and the Registrable Securities listed below in Item (3). The undersigned, by signing and returning this Notice and Questionnaire, agrees to be bound with respect to such Registrable Securities by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement, including without limitation Section 5 of the Registration Rights Agreement as if the undersigned Selling Securityholder were an original party thereto.

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

Certain capitalized terms used in this Questionnaire are defined in Appendix I attached hereto. Capitalized terms used in this Questionnaire but not defined in Appendix 1 have the meanings given to them in the accompanying letter.

(1) (a) Full legal name of Selling Securityholder:

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(i) Is such Selling Securityholder a:

- Corporation  General Partnership
- Individual  Limited Partnership
- Other (please specify: \_\_\_\_\_)

(ii) In what state is such Selling Securityholder organized or domiciled?

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(b) Full legal name of Registered Holder (if not the same as in (a) above) of Registrable Securities listed in Item (4) below:

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(c) Full legal name of DTC participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in Item (4) below are held:

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(2) Address for Notices to Selling Securityholder:

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

(3) Beneficial Ownership of Securities by Another Entity or Individual:

(a) Is another entity or individual the Beneficial Owner of any Securities or shares of Class A Common Stock issued upon conversion of any Securities?

- No (skip questions (b)-(e) below)
- Yes (answer questions (b)-(e) below)

(b) What is the full legal name of such Beneficial Owner?

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(c) Is such Beneficial Owner a:

- Corporation  General Partnership
- Individual  Limited Partnership
- Other (please specify: \_\_\_\_\_)

(d) In what state is such Beneficial Owner organized or domiciled?

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(e) Please provide the name, address and telephone number of a contact person for such Beneficial Owner.

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(4) Beneficial Ownership of Securities:

Except as set forth below in this Item (4), the undersigned is not a Beneficial Owner of any Securities or shares of Class A Common Stock issued upon conversion of any Securities.

(a) Principal amount of Registrable Securities (as defined in the Registration Rights Agreement) Beneficially Owned: \_\_\_\_\_  
CUSIP No(s). of such Registrable Securities: \_\_\_\_\_

Number of shares of Class A Common Stock (if any) issued upon conversion of such Registrable Securities:  
\_\_\_\_\_

(b) Principal amount of Securities other than Registrable Securities Beneficially Owned:

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CUSIP No(s). of such other Securities:

\_\_\_\_\_ Number of shares of Class A Common Stock (if any) issued upon conversion of such other Securities:

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(c) Principal amount of Registrable Securities that the undersigned wishes to be included in the Shelf Registration Statement:

\_\_\_\_\_ CUSIP No(s). of such Registrable Securities to be included in the Shelf Registration Statement:

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Number of shares of Class A Common Stock (if any) issued upon conversion of Registrable Securities that are to be included in the Shelf Registration Statement: \_\_\_\_\_

(5) Beneficial Ownership of Other Securities of the Company:

Except as set forth below in this Item (5), the undersigned Selling Securityholder is not a Beneficial Owner of any shares of Class A Common Stock or any other securities of the Company, other than the Securities and shares of Class A Common Stock listed above in Item (4).

State any exceptions here:

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(6) Relationships with the Company:

Except as set forth below, neither the Selling Securityholder nor any of its Affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other Material Relationship with the Company (or its predecessors or Affiliates) during the past three years.

State any exceptions here:

(7) Plan of Distribution:

Except as set forth below, the undersigned Selling Securityholder intends to distribute the Registrable Securities listed above in Item (4) only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned Selling Securityholder or, alternatively, through underwriters, broker-dealers or agents who may receive discounts, concessions or commissions from the Selling Stockholder or the purchaser. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at prices relating to the prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registered Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, (iv) through the writing of options, whether such options are listed on an option exchange or otherwise, or (iv) through the settlement of short sales. In connection with sales of the Registrable Securities or otherwise, the Selling Securityholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the Registrable Securities in the course of hedging the positions they assume. The Selling Securityholder may also sell Registrable Securities short and deliver Registrable Securities to close out such short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

(8) Are you a Member, an affiliate of a Member, or a person associated with a Member, of the National Association of Securities Dealers, Inc. (the "NASD")?

Yes \_\_\_\_\_ No \_\_\_\_\_

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If the answer to Question 8 is "yes", state (a) the name of any such NASD Member, (b) the nature of your affiliation or association with such NASD Member, (c) information as to such NASD Member's participation in any capacity in the Offering or the original placement of the Securities, (d) the number of shares of equity securities or face value of debt securities of the Company owned by you, (e) the date such securities were acquired and (f) the price paid for such securities.

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(9) If you answered "yes" to Question 8 above, please fill out the following table with respect to any purchases from the Company or any of its Affiliates in a private placement within twelve months prior to the date hereof (excluding your purchase of the Shares).

<TABLE>  
<CAPTION>

	Date of Purchase	Amount and Name of Securities	Price or Other Consideration
<S>	<C>	<C> <C>	<C>

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</TABLE>

Note: In no event may such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

By signing below, the Selling Securityholder acknowledges that it understands its obligation to comply, and agrees that it will comply, with the provisions of the Exchange Act and the rules and regulations thereunder, particularly Regulation M. The Selling Securityholder also acknowledges that it understands that the answers to this Questionnaire are furnished for use in connection with the Registration Statement and any amendments or supplements thereto filed with the SEC pursuant to the Securities Act of 1933, as amended.

In the event that the Selling Securityholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

By signing below, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (9) above and the inclusion of such information in the Shelf Registration Statement and related Prospectus. The Selling

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Securityholder understands that such information will be relied upon by the Company in connection with the preparation of the Shelf Registration Statement and related Prospectus.

The Selling Securityholder acknowledges that material misstatements and omissions of material facts in the Registration Statement and any amendments or supplement thereto may give rise to civil and criminal liabilities to the Company and to each officer and director of the Company signing the Registration Statement and to other persons signing such document. As a result, in accordance with the Selling Securityholder's obligation under Section 3(a) of the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the Selling Securityholder agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein which may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains in effect. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery as follows:

(i) to the Company:

Skechers U.S.A., Inc.  
228 Manhattan Beach Blvd.  
Manhattan Beach, California 90266  
Attention: \_\_\_\_\_

(ii) with a copy to:

Kirkpatrick & Lockhart LLP  
10100 Santa Monica Blvd.  
7th Floor  
Los Angeles, California 90067  
Attention: Ted Weitzman, Esq.

Once this Notice and Questionnaire is executed by the Selling Securityholder and received by the Company's counsel, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by



the respective successors, heirs, personal representatives, and assigns of the Company and the Selling Securityholder (with respect to the Registrable Securities Beneficially Owned by such Selling Securityholder and the Registrable Securities listed in Item (3) above). This Agreement shall be governed in all respects by the laws of the State of New York.

I confirm that, to the best of my knowledge and belief, the foregoing statements (including without limitation the answers to this Questionnaire) are correct.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

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

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Selling Securityholder  
(Print/type full legal name of  
beneficial owner of Registrable  
Securities)

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

Name:

Title:

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE FOR RECEIPT ON OR BEFORE [DEADLINE FOR RESPONSE] TO THE COMPANY'S COUNSEL AT:

Kirkpatrick & Lockhart LLP  
10100 Santa Monica Blvd.  
7th Floor  
Los Angeles, California 90067  
Attention: Ted Weitzman, Esq.

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## APPENDIX 1

### DEFINITIONS

For the purpose of this Questionnaire, the following definitions apply:

1. Affiliate. As used in Questions 1 - 7 and Question 9, a person is an "Affiliate" of a person if such person controls, is controlled by, or is under common control with, another person. Please assume that an "Affiliate" of the Company includes without limitation, any 5% stockholder of the Company (including any person who owns, controls, or holds or holds an option to acquire, and has the power to vote, 5% or more of the Company's outstanding voting securities). "Control" is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

As used in Question 8 of this Questionnaire, an "affiliate" of an NASD member has the following meaning:

- (1) a company which controls, is controlled by or is under common control with a member;
- (2) the term affiliate is presumed to include, but is not limited to, the following:

- (a) a company will be presumed to control a member if the company beneficially owns 10% or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10% or more of the distributable profits or losses of a member which is a partnership;
- (b) a member will be presumed to control a company if the member and persons associated with the member beneficially own (i) 10% or more of the outstanding subordinated debt of a company, (ii) 10% or more of the outstanding voting securities of a company which is a corporation or (iii) a partnership interest in 10% or more of the distributable profits or losses of a company which is a partnership;
- (c) a company will be presumed to be under common control with a member if:
  - (i) the same natural person or company controls both the member and company by beneficially owning 10% or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10% or more of the distributable profits or losses of a member or company which is a partnership; or

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- (ii) a person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

2. Beneficial Owner. A "Beneficial Owner" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power and/or investment power with respect to such security. Voting power includes "the power to vote, or to direct the voting, of such security" and investment power includes "the power to dispose, or to direct the disposition, of such security."

A person is also a Beneficial Owner of a security if he has the right to acquire beneficial ownership of such security, at any time within sixty days, including but not limited to, any right to acquire through: (a) the exercise of an option, warrant or right, (b) the conversion of a convertible security, (c) the power to revoke a trust, discretionary account or similar arrangement, or (d) the automatic termination of a trust, discretionary account or similar arrangement; provided, however, that if the acquisition of an option, warrant, right, convertible security or power described in (a), (b) or (c) is for the purpose of maintaining or obtaining control over the issuer of the security, the holder of the option, warrant, right, convertible security or power shall, immediately upon such acquisition and regardless of when it is exercisable, be deemed a beneficial owner of the underlying securities.

The possession of the legal power to vote and/or direct the disposition of securities, absent unusual circumstances, will be sufficient to confer beneficial ownership. Such power may be held directly, or indirectly, through one or more controlled entities.

3. Material Relationship. The term "material relationship" has not been defined by the Securities and Exchange Commission (the "SEC"). The SEC, however, is likely to construe as material any relationship which tends to impact arm's length bargaining in dealings with a company, whether arising from a close business connection, family relationship, a relationship of control or otherwise. For example, you should conclude that you have such a relationship with any organization of which you own, directly or indirectly, 10% more of the outstanding voting stock, or in which you have some other substantial interest, and with any person or organization with whom you have, or with whom any relative (or any other person or organization as to which you have any of the foregoing other relationships) has, a contractual relationship.

4. Member. Rule 0120 of the NASD's Rules of Fair Practice defines the term "member" to mean any individual, partnership, corporation or other legal entity admitted to membership in the NASD, and Article I of the NASD's By-Laws defines the term "person associated with a member" to mean every sole proprietor, partner, officer, director, or branch manager of any member, or any natural person occupying a similar status or performing similar functions, or any natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by such member (for example, any employee), whether or not such person is registered or exempt from registration with the NASD.

Exhibit 5.1

[Letterhead of Kirkpatrick & Lockhart LLP]

May 8, 2002

Skechers U.S.A., Inc.  
228 Manhattan Beach Blvd.  
Manhattan Beach, CA 90266

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Skechers U.S.A., Inc., a Delaware corporation (the "Company"), in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of \$90,000,000 aggregate principal amount of 4.50% Convertible Subordinated Notes due April 15, 2007 (the "Notes") and such indeterminate number of shares of the Company's Class A common stock, par value \$0.001 per share as may be required for issuance upon conversion of the Notes (the "Shares"). The Notes and the Shares are to be offered and sold by certain security holders of the Company. In this regard we have participated in the preparation and filing with the Securities and Exchange Commission (the "SEC") of a Registration Statement on Form S-3 relating to the Notes and the Shares (such Registration Statement, as it may be amended from time to time, is herein referred to as the "Registration Statement").

This opinion is delivered in accordance with the requirements of Item 601(b)(5)(i) of Regulation S-K under the Securities Act.

For the purpose of this opinion, we have examined such matters of law and originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary.

Based on the foregoing and on all other instruments, documents and matters examined for the rendering of this opinion, we are of the opinion that the Notes are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms. We are of the further opinion that the Shares have been duly authorized and reserved and, when issued upon conversion of the Notes in accordance with the Notes and the Indenture dated as of April 9, 2002, by and between the Company and Wells Fargo Bank, N.A., as trustee, the Shares will be validly issued, fully paid and non-assessable.

We express no opinion as to the applicability or effect of any laws, orders or judgments of any state or jurisdiction other than the substantive laws of the States of Delaware and New York. Further, our opinion is based solely upon existing laws, rules and regulations, and we undertake no obligation to advise you of any changes that may be brought to our attention after the date hereof.

We consent to the use of our name under the caption "Legal Matters" in the Prospectus, constituting part of the Registration Statement, and to the filing of this opinion as an exhibit to the Registration Statement.

By giving you this opinion and consent, we do not admit that we are experts with respect to any part of the Registration Statement or Prospectus within the meaning of the term "expert" as used in Section 11 of the Securities Act, or the rules and regulations promulgated thereunder by the SEC, nor do we admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Sincerely,

/s/ KIRKPATRICK & LOCKHART LLP

Exhibit 12.1

STATEMENT RE: COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
(IN THOUSANDS)(1)

<TABLE>  
<CAPTION>

	YEAR ENDED DECEMBER 31,				
	1997	1998	1999	2000	2001
	<C>	<C>	<C>	<C>	<C>
Earnings before income taxes .....	\$11,413	\$25,121	\$32,691	\$72,351	\$75,955
Add: Interest expense .....	4,186	8,631	6,797	9,338	13,891
Earnings as defined .....	15,599	33,752	39,488	81,689	89,846
Fixed charges .....	4,186	8,631	6,923	10,388	14,156
Ratio of earnings to fixed charges ....	3.73x	3.91x	5.70x	7.86x	6.35x

</TABLE>

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- (1) Earnings used in computing the ratio of earnings to fixed charges consist of net earnings before income taxes plus interest expense. Fixed charges include interest expensed or capitalized.

Exhibit 23.1

Independent Auditors' Consent

The Board of Directors  
Skechers U.S.A., Inc.:

We consent to the use of our report dated February 13, 2002, with respect to the consolidated balance sheets of Skechers U.S.A., Inc. as of December 31, 2001 and 2000, and the related consolidated statements of earnings, stockholders' equity and comprehensive income and cash flows for each of the years in the three-year period ended December 31, 2001, incorporated herein by reference and to the reference to our firm under the headings "Selected Consolidated Financial Data" and "Experts" in the prospectus.

KPMG LLP

Los Angeles, California  
May 6, 2002

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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FORM T-1

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

-----

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT  
TO SECTION 305(b) (2)

WELLS FARGO BANK, NATIONAL ASSOCIATION  
(Exact name of trustee as specified in its charter)

NOT APPLICABLE (Jurisdiction of incorporation or organization if not a U.S. national bank)	94-1347393 (I.R.S. Employer Identification No.)
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420 MONTGOMERY STREET SAN FRANCISCO, CA (Address of principal executive offices)	94163 (Zip code)
--	---------------------

WELLS FARGO & COMPANY  
LAW DEPARTMENT, TRUST SECTION  
MAC N9305-172  
SIXTH AND MARQUETTE, 17TH FLOOR  
MINNEAPOLIS, MN 55479  
(agent for services)

-----

SKECHERS U.S.A., INC.  
(Exact name of obligor as specified in its charter)

DELAWARE (State or other jurisdiction of incorporation or organization)	95-4376145 (I.R.S. Employer Identification No.)
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228 MANHATTAN BEACH BLVD. MANHATTAN BEACH, CA (Address of principal executive offices)	90266 (Zip code)
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4.50% CONVERTIBLE SUBORDINATED NOTES DUE 2007  
(Title of the indenture securities)

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Item 1. General Information. Furnish the following information as to the  
trustee:

(a) Name and address of each examining or supervising authority to  
which it is subject.

Comptroller of the Currency,  
Treasury Department  
Washington, D.C. 20230

Federal Deposit Insurance Corporation  
Washington, D.C. 20429

Federal Reserve Bank of San Francisco  
San Francisco, CA 94120

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

No responses are included for Items 3-14 of this Form T-1 because the obligor is not in default as provided under Item 13.

Item 15. Foreign Trustee. Not applicable.

Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.

Exhibit 1. A copy of the Articles of Association of the trustee now in effect. \*

Exhibit 2. A copy of the Comptroller of the Currency Certificate of Corporate Existence for Wells Fargo Bank, National Association, dated November 28, 2001. \*

Exhibit 3. A copy of the authorization of the trustee to exercise corporate trust powers. A copy of the Comptroller of the Currency Certificate of Corporate Existence (with Fiduciary Powers) for Wells Fargo Bank, National Association, dated November 28, 2001. \*

Exhibit 4. Copy of By-laws of the trustee as now in effect. \*

Exhibit 5. Not applicable.

Exhibit 6. The consents of United States institutional trustees required by Section 321(b) of the Act.

Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority. \*

Exhibit 8. Not applicable.

Exhibit 9. Not applicable.

\* Incorporated by reference to exhibit number 25 filed with registration statement number 333-87398.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Los Angeles and State of California on the day 6th of May, 2002.

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JEANIE MAR

-----  
Name: Jeanie Mar  
Title: Vice President

EXHIBIT 6

May 6, 2002



Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, the undersigned hereby consents that reports of examination of the undersigned made by Federal, State, Territorial, or District authorities authorized to make such examination may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JEANIE MAR

-----  
Jeanie Mar  
Vice President