UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): July 24, 2003

Constellation Brands, Inc.

(Exact name of registrant as specified in its charter)

001-08495

(Commission File Number)

Delaware	16-0716709
(State or other jurisdiction of incorporation)	(IRS Employer Identification No.)

300 WillowBrook Office Park, Fairport, New York 14450

(Address of principal executive offices) (Zip Code)

(585) 218-3600

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

The following exhibits are filed to be incorporated into registration statement No. 333-63480:

No.	Description
1.1	Underwriting Agreement with respect to Class A Common Stock dated July 24, 2003 by and among Constellation Brands, Inc. and Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and UBS Securities LLC, as Underwriters.
1.2	Underwriting Agreement with respect to Depositary Shares Representing 1/40th of a share of 5.75% Series A Mandatory Convertible Preferred Stock dated July 24, 2003 by and among Constellation Brands, Inc. and J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and UBS Securities LLC, as Underwriters.
4.1	Certificate of Designations of 5.75% Series A Mandatory Convertible Preferred Stock of the Registrant.
4.2	Deposit Agreement by and among the Registrant, Mellon Investor Services LLC and all holders from time to time of Depository Receipts evidencing Depositary Shares Representing 5.75% Series A Mandatory Convertible Preferred Stock of the Registrant.

SIGNATURES

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

CONSTELLATION BRANDS, INC.

Dated: July 30, 2003

By: /S/ THOMAS S. SUMMER

Thomas S. Summer
Executive Vice President
and Chief Financial Officer

INDEX TO EXHIBITS

(1) UNDERWRITING AGREEMENT

1.1 Underwriting Agreement with respect to Class A Common Stock dated July 24, 2003 by and among Constellation Brands, Inc. and Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and UBS Securities LLC, as Underwriters.

1.2 Underwriting Agreement with respect to Depositary Shares Representing 1/40th of a share of 5.75% Series A Mandatory Convertible Preferred Stock dated July 24, 2003 by and among Constellation Brands, Inc. and J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and UBS Securities LLC, as Underwriters.

(2) PLAN OF ACQUISITION, REORGANIZATION, ARRANGEMENT, LIQUIDATION OR SUCCESSION
Not Applicable.

(4) INSTRUMENTS DEFINING THE RIGHTS OF SECURITY HOLDERS, INCLUDING INDENTURES

4.1 Certificate of Designations of 5.75% Series A Mandatory Convertible Preferred Stock of the Registrant.

4.2 Deposit Agreement by and among the Registrant, Mellon Investor Services LLC and all holders from time to time of Depository Receipts evidencing Depositary Shares Representing 5.75% Series A Mandatory Convertible Preferred Stock of the Registrant.

(14) CODE OF ETHICS
Not Applicable.

(16) LETTER RE CHANGE IN CERTIFYING ACCOUNTANT
Not Applicable.

(17) LETTER RE DIRECTOR RESIGNATION
Not Applicable.

(20) OTHER DOCUMENTS OR STATEMENTS TO SECURITY HOLDERS
Not Applicable.

(23) CONSENTS OF EXPERTS AND COUNSEL
Not Applicable.

(24) POWER OF ATTORNEY
Not Applicable.

(99) ADDITIONAL EXHIBITS
Not Applicable.

Exhibit 1.1

EXECUTION COPY

Constellation Brands, Inc.

Class A Common Stock

Underwriting Agreement

New York, New York
July 24, 2003

To the Representatives named in Schedule I hereto
of the Underwriters named in Schedule II hereto

Ladies and Gentlemen:

Constellation Brands, Inc., a corporation incorporated under the laws of the State of Delaware (the "*Company*"), proposes to sell to the several underwriters named in Schedule II hereto (the "*Underwriters*"), for whom you (the "*Representatives*") are acting as representatives, the number of shares of Class A Common Stock, $.01 par value ("*Common Stock*"), of the Company set forth in Schedule I hereto (said shares to be issued and sold by the Company being hereinafter called the "*Underwritten Securities*"). The Company also proposes to grant to the Underwriters an option to purchase up to the number of additional shares of Common Stock set forth in Schedule I hereto to cover over-allotments (the "*Option Securities*"; the Option Securities, together with the Underwritten Securities, being hereinafter called the "*Securities*"). Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be (the "*Incorporated Documents*"); and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 17 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission a registration statement (the file number of which is set forth in Schedule I hereto) on Form S-3, including a related ba-

sic prospectus, for registration under the Act of the offering and sale of the Securities. The Company may have filed one or more amendments thereto, including a Preliminary Final Prospectus, each of which has previously been furnished to the Representatives. The Company will next file with the Commission one of the following: (1) after the Effective Date of such registration statement, a final prospectus supplement relating to the Securities in accordance with Rules 430A and 424(b), (2) prior to the Effective Date of such registration statement, an amendment to such registration statement (including the form of final prospectus supplement) or (3) a final prospectus in accordance with Rules 415 and 424(b). In the case of clause (1), the Company has included in such registration statement, as amended at the Effective Date, all information (other than Rule 430A Information) required by the Act and the rules thereunder to be included in such registration statement and the Final Prospectus. As filed, such final prospectus supplement or such amendment and form of final prospectus supplement shall contain all Rule 430A Information, together with all other such required information, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to the Representatives prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and any Preliminary Final Prospectus) as the Company has advised the Representatives, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x).

(b) On the Effective Date the Registration Statement did or will, and when the Final Prospectus is first filed (if required) in accordance with Rule 424(b) and on the Closing Date (as defined herein) and on any date on which Option Securities are purchased, if such date is not the Closing Date (a "*settlement date*"), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder; on the Effective Date and at the Execution Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not, include any 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; *provided*, *however*, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Rep-

resentatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto).

(c) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; all outstanding shares of Common Stock have been duly and validly authorized and issued and are fully paid and non-assessable; the Securities have been duly and validly authorized, and, when issued and delivered to and paid for by the Underwriters pursuant to this Agreement, will be fully paid and non-assessable; the Securities are authorized for trading on the New York Stock Exchange; the certificates for the Securities are in valid and sufficient form; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities; and, except as set forth in the Final Prospectus, the Incorporated Documents or the Constellation Brands Long-Term Stock Incentive Plan, Incentive Stock Option Plan, 1989 Stock Purchase Plan or UK Sharesave Scheme, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding.

(d) No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(e) The Incorporated Documents, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further Incorporated Documents, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not 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.

(f) The Company and each of its consolidated subsidiaries (the "*Subsidiaries*") have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, with full power and authority (corporate and other) to own their properties and conduct their respective businesses as described in the Final Prospectus and are duly qualified to transact business as foreign corporations in good standing under the laws of each jurisdiction where the ownership or leasing of their respective properties or the conduct of their respective businesses requires such qualification, except where the failure to

so qualify would not have a material adverse effect on the business, management, condition (financial or otherwise), results of operations or business prospects of the Company and the Subsidiaries considered as a whole (a "*Material Adverse Effect*"); the Company had at the dates indicated an authorized capitalization as set forth in the Final Prospectus, and the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and the outstanding shares of capital stock that the Company owns (directly or indirectly) of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and (except for directors' qualifying shares) are owned beneficially by the Company free and clear of all liens, encumbrances, equities and claims (collectively, "*Liens*") except for the Liens under the Amended and Restated Credit Agreement, dated as of March 19, 2003, between the Company, the guarantors named therein, the lenders signatory thereto, JPMorgan Chase Bank, as Administrative Agent, and J.P. Morgan Europe Limited, as London Agent (the "*Credit Agreement*"). Neither the Company nor any Subsidiary is in violation of its respective charter or bylaws and neither the Company nor any of the Subsidiaries is in default (nor has an event occurred with notice, lapse of time or both that would constitute a default) in the performance of any obligation, agreement or condition contained in any agreement, lease, indenture or instrument of the Company or any Subsidiary where such violation or default would have a Material Adverse Effect.

(g) The Company has full power and authority to enter into this Agreement and to issue, sell and deliver the Securities to be sold by it to the Underwriters as provided herein. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby does not and will not conflict with or result in a breach or violation by the Company or any Subsidiary, as the case may be, of any of the terms or provisions of, constitute a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any Liens upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms of, (1) the Credit Agreement and any other indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any Subsidiary, as the case may be, is a party or to which any of them or any of their respective properties is subject, (2) the charter or bylaws of the Company or any Subsidiary, as the case may be, or (3) any statute, judgment, decree, order, rule or regulation of any foreign or domestic court, governmental agency or regulatory agency or body having jurisdiction over the Company or any of the Subsidiaries or any of their respective properties or assets except, with respect to clauses (1) and (3) of this Section 1(g), for any conflict, breach, violation, default or Liens that would not have a Material Adverse Effect.

(h) No consent, approval, authorization, order, registration or qualification of or with any governmental authority or agency or any court or similar body is required for the execution, delivery or performance of this Agreement by the Company

or the transactions contemplated herein or the issuance, sale and delivery of the Securities, except such as (1) have been obtained under the Act and (2) may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities by the Underwriters.

(i) The execution and delivery of this Agreement by the Company has been duly authorized by all necessary corporate action, and this Agreement has been duly executed and delivered by the Company and is the valid and legally binding agreement of the Company.

(j) Except as described or referred to in the Final Prospectus, there is not pending, or to the knowledge of the Company threatened, any action, suit, proceeding, inquiry or investigation to which the Company or any of the Subsidiaries is a party, or to which the property of the Company or any of the Subsidiaries is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company or any of the Subsidiaries, would, individually or in the aggregate, have a Material Adverse Effect or might materially adversely affect the consummation of the offering of the Securities pursuant to this Agreement; and all pending legal or governmental proceedings to which the Company or any of the Subsidiaries is a party or that affect any of their respective properties that are not described in the Final Prospectus, including ordinary routine litigation incidental to the business, would not, in the aggregate, result in a Material Adverse Effect.

(k) KPMG LLP are independent certified public accountants with respect to the Company and the Subsidiaries within the meaning of the Act and the applicable published rules and regulations thereunder. PricewaterhouseCoopers are independent certified public accountants with respect to Hardy Wine Company Limited ("*Hardy*") and its subsidiaries under Australian Statement of Auditing Practice AUP 32, "Audit Independence," and The Institute of Chartered Accountants in Australia's Code of Professional Conduct. Arthur Andersen LLP previously served as the Company's auditors and during such service were independent certified public accountants with respect to the Company and its then subsidiaries within the meaning of the Act and the applicable published rules and regulations thereunder (as in effect during such service). The historical financial statements of the Company (including the related notes) incorporated by reference in the Final Prospectus comply as to form in all material respects with the requirements applicable to a registration statement on Form S-3 under the Act; such historical financial statements have been prepared in accordance with United States generally accepted accounting principles ("*GAAP*") consistently applied throughout the periods covered thereby (other than as the result of the application of Statement of Financial Accounting Standards No. 142) and present fairly in all material respects the financial position of the Company at the respective dates indicated and the results of its operations and cash flows and statements of stockholders' equity for the respective periods indicated. The historical financial statements of Hardy (including the related notes) incorporated by reference in the Final Prospectus have been

prepared in accordance with Australian GAAP consistently applied throughout the periods covered thereby and present fairly in all material respects the financial position of Hardy at the respective dates indicated and its financial performance and cash flows for the respective periods indicated and such historical financial statements have to the extent required by the Commission for each period presented been properly reconciled to United States GAAP and contain a discussion of all material differences between United States GAAP and Australian GAAP as they relate to Hardy. The historical financial information of Hardy incorporated by reference in the Final Prospectus and converted into United States Dollars has been so converted on a consistent basis in accordance with United States GAAP and the rules and regulations of the Commission. The financial information included in or incorporated by reference in the Final Prospectus and relating to the Company is derived from the accounting records of the Company and the Subsidiaries and presents fairly in all material respects the information purported to be shown thereby. The unaudited pro forma combined financial statements included in or incorporated by reference in the Final Prospectus have been prepared on a basis consistent with the historical financial statements incorporated by reference in the Final Prospectus (except for the pro forma adjustments specified therein), include all material adjustments to the historical financial statements required by Rule 11-02 of Regulation S-X under the Act and the Exchange Act to reflect the acquisition of Hardy described in the Final Prospectus or in the documents incorporated therein by reference, are based on assumptions made on a reasonable basis and present fairly such acquisition described in the Final Prospectus or in the documents incorporated therein by reference. The other historical financial and statistical information and data included in the Final Prospectus or in the documents incorporated therein by reference presents fairly in all material respects the information purported to be shown thereby.

(l) Except as described in or contemplated by the Final Prospectus, subsequent to May 31, 2003, (i) neither the Company nor any of the Subsidiaries has sustained any loss or interference with its business or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree which would have a Material Adverse Effect; and (ii) there has not been any change in the capital stock (other than as a result of the exercise of the Company's outstanding stock options, purchases under the Company's 1989 Employee Stock Purchase Plan, as amended, any purchases under the Company's UK Sharesave Scheme, any repurchases by the Company under its Stock Repurchase Program or as a result of the conversion of the Company's Class B Common Stock (par value $.01 per share) into Common Stock) or any net increase in long-term debt (exclusive of any currency translation effect) of the Company or any of the Subsidiaries, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, condition (financial or otherwise), prospects or operations of the Company and the Subsidiaries taken as a whole.

(m) The Company and each of the Subsidiaries has good and marketable title to all properties and assets, as described in the Final Prospectus as owned by it free and clear of all Liens, except as provided under the Credit Agreement and as such as are described in the Final Prospectus or do not interfere with the use made and proposed to be made of such properties and assets by the Company and the Subsidiaries and would not individually or in the aggregate result in a Material Adverse Effect; and all of the leases and subleases material to the business of the Company and the Subsidiaries taken as a whole, and under which the Company or any of the Subsidiaries holds properties described in the Final Prospectus, are in full force and effect and neither the Company nor any of the Subsidiaries has any notice of any claims of any sort that have been asserted by anyone adverse to the rights of the Company or any of the Subsidiaries under such leases or subleases, or affecting or questioning the rights of the Company or any of the Subsidiaries to the continued possession of the leased or subleased premises under any such lease or sublease, which claims would have a Material Adverse Effect.

(n) The Company and each of the Subsidiaries owns or possesses all governmental and other licenses, permits, certificates, consents, orders, approvals and other authorizations necessary to own, lease and operate its properties and to conduct its business as presently conducted by it and described in the Final Prospectus, except where the failure to own or possess such licenses, permits, certificates, consents, orders, approvals and other authorizations would not, individually or in the aggregate, have a Material Adverse Effect (collectively, the "*Material Licenses*"); all of the Material Licenses are valid and in full force and effect, except where the invalidity of a Material License or the failure of such Material License to be in full force and effect would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of its Subsidiaries has received any notice of proceedings relating to revocation or modification of any such Material License which would, individually or in the aggregate, have a Material Adverse Effect.

(o) The Company and each of the Subsidiaries owns or possesses, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, trademarks, service marks, trade names and know-how (including trade secrets and other patentable and/or unpatentable proprietary or confidential information or procedures) (collectively, "*intellectual property*") necessary to carry on its business as presently operated by it, except where the failure to own or possess or have the ability to acquire any such intellectual property would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of the Subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any intellectual property or of any facts which would render any intellectual property invalid or inadequate to protect the interest of the Company or any of the Subsidiaries therein and which infringement or conflict would have a Material Adverse Effect.

(p) None of the Company or any of the Subsidiaries has taken, or will take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities.

(q) None of the Company or any of its Subsidiaries is an investment company required to be registered under the Investment Company Act of 1940, as amended.

(r) Except as described in the Final Prospectus, the Company and the Subsidiaries comply in all material respects with all Environmental Laws (as defined below), except to the extent that failure to comply with such Environmental Laws would not individually or in the aggregate have a Material Adverse Effect. None of the Company or any of the Subsidiaries is the subject of any pending or, to the knowledge of the Company, threatened foreign, federal, state or local investigation evaluating whether any remedial action by the Company or any of the Subsidiaries is needed to respond to a release of any Hazardous Materials (as defined below) into the environment, resulting from the Company's or any of the Subsidiaries' business operations or ownership or possession of any of their properties or assets or is in contravention of any Environmental Law that would, individually or in the aggregate, have a Material Adverse Effect. None of the Company or any of the Subsidiaries has received any notice or claim, nor are there pending or, to the knowledge of the Company, threatened lawsuits against them, with respect to violations of an Environmental Law or in connection with any release of any Hazardous Material into the environment that would have a Material Adverse Effect. As used herein, "*Environmental Laws*" means any foreign, federal, state or local law or regulation applicable to the Company's or any of the Subsidiaries' business operations or ownership or possession of any of their properties or assets relating to environmental matters, and "*Hazardous Materials*" means those substances that are regulated by or form the basis of liability under any Environmental Laws.

(s) Neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of the Subsidiaries has taken any action, directly or indirectly, that would result in a violation of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder (the "*FCPA*"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, other than violations that, individually or in the aggregate, would not have a Material Adverse Effect. The Company, the Subsidiaries and, to the knowledge of the Company, its affiliates have conducted their respective businesses in compliance in all material respects with the FCPA and have

instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(t) The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "*Money Laundering Laws*") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of the Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(u) Neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of the Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("*OFAC*"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities contemplated by this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(v) No relationship, direct or indirect, exists between or among the Company and the Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, which is not described in the Final Prospectus or incorporated therein by reference which would have a Material Adverse Effect.

(w) No labor problem exists with the employees of the Company or any of the Subsidiaries or, to the knowledge of the Company, is imminent that, in either case, would have a Material Adverse Effect.

(x) Except as disclosed in the Final Prospectus, all U.S. federal income tax returns and all foreign tax returns of the Company and the Subsidiaries required by law to be filed have been filed (taking into account extensions granted by the applicable governmental agency) and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the payment of which would not individually or in the aggregate result in a Material Adverse Effect. All other corporate franchise and income tax returns of the Company and the Subsidiaries required to be filed pursuant to applicable foreign, federal, state or local laws have been filed, except insofar as the failure to file

such returns would not individually or in the aggregate result in a Material Adverse Effect, and all taxes shown on such returns or otherwise assessed which are due and payable have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the payment of which would not, individually or in the aggregate, result in a Material Adverse Effect.

(y) The Company and each of the Subsidiaries maintains (and in the future will maintain) a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(z) The Company and each of the Subsidiaries is in compliance with, and none of such entities has received any notice of any outstanding violation of, all laws, regulations, ordinances and rules applicable to it and its operations, except, in either case, where any failure by the Company or any of the Subsidiaries to comply with any such law, regulation, ordinance or rule would not, individually or in the aggregate, result in a Material Adverse Effect.

(aa) Neither the issuance, sale or delivery of the Securities nor the application of the proceeds thereof by the Company as set forth in the Final Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(bb) The Company is, and immediately after the Closing Date will be, Solvent. As used herein, the term "*Solvent*" means, with respect to any such entity on a particular date, that on such date (1) the fair market value of the assets of such entity is greater than the amount that will be required to pay the probable liabilities of such entity on its debts as they become absolute and matured, (2) assuming the sale of the Securities as contemplated by this Agreement and as described in the Final Prospectus, such entity is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (3) such entity is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (4) such entity does not have unreasonably small capital.

(cc) Other than this Agreement, neither the Company nor any Subsidiary is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or any Subsidiary or any Underwriters for a

brokerage commission, finders' fee or like payment in connection with the offering and sale of the Securities.

(dd) No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained in the Final Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

Any certificate signed by an officer of the Company and delivered to the Underwriters or to counsel for the Underwriters at or prior to the Closing Date pursuant to any section of this Agreement or the transactions contemplated hereby shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

2. Purchase and Sale.

(a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at a purchase price of $26.74 per share, the number of the Underwritten Securities set forth opposite such Underwriter's name in Schedule II hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 1,425,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written notice by the Representatives to the Company setting forth the number of the Option Securities as to which the several Underwriters are exercising the option and the settlement date. The number of shares of the Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as the Representatives in their absolute discretion shall make to eliminate any fractional shares.

3. Delivery and Payment. Delivery of and payment for the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made on the date and at the time specified in Schedule I hereto or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and pay-

ment for the Securities being herein called the "*Closing Date*"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

The Company will pay all applicable state transfer taxes, if any, involved in the transfer to the Underwriters of the Securities and the Underwriters will pay any additional stock transfer taxes involved in further transfers.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) The Company will use its best efforts to cause the Registration Statement, if not effective at the Execution Time, and any amendment thereof, to become effective. Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished the Representatives a copy for their review prior to filing and will not file any such proposed amendment or supplement to which the Representatives reasonably object. Subject to the foregoing sentence, if the Registration Statement has become or becomes effective pursuant to Rule 430A, or filing of the Final Prospectus is otherwise required under Rule 424(b), the Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly

advise the Representatives (1) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (2) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (3) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (4) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (5) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (6) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, the Company promptly will (1) notify the Representatives of such event, (2) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement which will correct such statement or omission or effect such compliance and (3) supply any supplemented Final Prospectus to the Representatives in such quantities as the Representatives may reasonably request.

(c) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act, as many copies of each Preliminary Final Prospectus and the Final Prospectus and any supplement thereto as the Representatives may reasonably request. The Company will pay the expenses of printing or other production of all documents relating to the offering.

(e) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate, will maintain such qualifications in effect so long as required for the distribution of the Securities and will pay any fee of the National Association of Securities Dealers, Inc., in connection with its review of the offering; *provided, however*, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject.

(f) The Company will not, without the prior written consent of each of Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., offer, sell, contract to sell, pledge, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of Common Stock (other than the Securities) or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock (other than the Depositary Shares ("*Depositary Shares*"), each representing 1/40 of a share of the 5.75% Series A Mandatory Convertible Preferred Stock of the Company (the "*Preferred Stock*")) or publicly announce an intention to effect any such transaction, until the Business Day set forth on Schedule I hereto; *provided*, *however*, that (i) the Company may issue and sell Common Stock pursuant to any stock option plan, stock incentive plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the Execution Time (including pursuant to a registration statement on Form S-8 filed after the Execution Time relating to shares of Common Stock to be issued under such employee stock option plans, stock ownership plans or dividend reinvestment plans), (ii) the Company may issue Common Stock (a) upon the conversion of the Preferred Stock in accordance with the terms of the Preferred Stock and (b) in such amounts as is necessary to pay accrued and unpaid dividends in the form of shares of Common Stock on the Preferred Stock, (iii) the Company may file a shelf registration statement on Form S-3 after the Execution Time relating to, among other things, shares of Common Stock; *provided, however,* that the Company may not offer shares of Common Stock using such shelf registration statement until the Business Day set forth on Schedule I hereto except as permitted by clause (ii) hereof.

(g) The Company will use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Prospectus Supplement under the caption "Use of Proceeds." The Company will use the net pro-

ceeds received by it from the sale of Depositary Shares pursuant to the Prospectus Supplement dated July 24, 2003 in the manner specified in such Prospectus Supplement under the caption "Use of Proceeds."

(h) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Underwritten Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If the Registration Statement has not become effective prior to the Execution Time, unless the Representatives agree in writing to a later time, the Registration Statement will become effective not later than (i) 6:00 PM New York City time on the date of determination of the public offering price, if such determination occurred at or prior to 3:00 PM New York City time on such date or (ii) 9:30 AM on the Business Day following the day on which the public offering price was determined, if such determination occurred after 3:00 PM New York City time on such date; if filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, will be filed in the manner and within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have requested and caused:

(i) McDermott, Will & Emery, special counsel for the Company, to have furnished to the Underwriters their written opinion addressed to the Underwriters, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially in the form of Annex I hereto; and

(ii) Nixon Peabody LLP, counsel for the Company, to have furnished to the Underwriters their written opinion addressed to the Underwriters, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially in the form of Annex II hereto.

(c) The Representatives shall have received from Cahill Gordon & Reindel LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date

and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Registration Statement, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Final Prospectus, any supplements to the Final Prospectus and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(e) The Company shall have requested and caused KPMG LLP to have furnished to the Representatives, at the Execution Time and at the Closing Date, letters (which may refer to letters previously delivered to one or more of the Representatives), dated respectively as of the Execution Time and as of the Closing Date, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information included or incorporated by reference in the Registration Statement and the Final Prospectus.

References to the Final Prospectus in this paragraph (e) include any supplement thereto at the date of the letter.

(f) The Company shall have requested and caused PricewaterhouseCoopers to have furnished to the Representatives, at the Execution Time, a letter, dated as of the Execution Time, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information relating to Hardy included or incorporated by reference in the Registration Statement and the Final Prospectus.

References to the Final Prospectus in this paragraph (f) include any supplement thereto at the date of the letter.

(g) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraphs (e) through (f) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and the Subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto).

(h) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(i) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(j) The Securities shall have been listed and admitted and authorized for trading on the New York Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives.

(k) At the Execution Time, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit A hereto from each person or entity that is identified on Schedule III hereto, addressed to the Representatives.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Cahill Gordon & Reindel LLP, counsel for the Underwriters, at 80 Pine Street, New York, New York 10005, on the Closing Date.

7. Reimbursement of Expenses.

(a) On the Closing Date, the Underwriters shall reimburse the Company for up to $845,743.00 of documented expenses incurred by the Company in connection with the transactions; *provided*, *however,* that any reimbursement by the Underwriters pursuant to paragraph (a) of this Section 7 shall be made without duplication of any reimbursement made by the Underwriters pursuant to Section 7(a) of the Underwriting Agreement dated the date hereof between the Company and the underwriters named therein relating to an underwritten public offering of the Depositary Shares.

(b) If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through the Representatives on demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter, its officers and directors, each person, if any, who controls any Underwriter and each affiliate of any Underwriter which assists such Underwriter in the distribution of the Securities, within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, the legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted) caused by any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or any amendment thereof, or in the Basic Prospectus, any Preliminary Final

Prospectus or the Final Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), 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 or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless each of the Company, its directors, its officers and each person who controls the Company within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to such losses, claims, damages or liabilities which are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion therein. The Company acknowledges that the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and, under the heading "Underwriting," (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions and reallowances and (iii) the paragraphs related to stabilization, syndicate covering transactions and penalty bids in any Preliminary Final Prospectus and the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Final Prospectus or the Final Prospectus.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (the "*Indemnified Person*") shall promptly notify the person or persons against whom such indemnity may be sought (each an "*Indemnifying Person*") in writing, and such Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 8 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) such Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary, (ii) such Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to such Indemnified Person or (iii) the named parties in any such proceeding (including any impleaded parties) include an Indemnifying Person and an Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that an Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to

any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for any Underwriter, each affiliate of any Underwriter which assists such Underwriter in the distribution of the Securities and such control persons of any Underwriter shall be designated in writing by the Representatives, and any such separate firm for the Company, their respective directors, their respective officers and such control persons of any of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, such Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in the first and second paragraphs of this Section 8 is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then the Company and the Underwriters severally agree to contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities; *provided*, *however*, that in no case shall any Underwriter (except as may be provided in an agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter 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 Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds from the offering and sale of the Securities (before deducting expenses) received by the Company and the total underwriting commissions received by the Underwriters, in each case as set forth in the table on the cover of the Final Prospectus. The relative fault of the Company on the one hand and the Underwriters on the other 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 by the Underwriters on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and each of the Underwriters severally agree that it would not be just and equitable if contribution pursuant to this Section 8 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 Person as a result of the losses, claims, damages and liabilities 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 Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, in no event shall any Underwriter be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter 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.

(f) 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.

(g) The indemnity and contribution agreements contained in this Section 8 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter or by or on behalf of the Company, its respective officers or directors or any other person controlling the Company and (iii) acceptance of and payment for any of the Securities.

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule II hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided*, *however*, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall deter-

mine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the New York Stock Exchange or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange, (ii) a banking moratorium shall have been declared either by federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to the Citigroup Global Markets Inc. General Counsel (facsimile: (212) 816-7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York, 10013 Attention: General Counsel; with a copy to Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005 (facsimile: (212) 269-5420), Attention: Daniel J. Zubkoff, Esq.; or, if sent to the Company, will be mailed, delivered or telefaxed to the Company, 300 Willow Brook Office Park, Fairport, New York, 14450 (facsimile: (585) 218-3603), Attention: General Counsel; with a copy to McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois 60606 (facsimile: (312) 984-7700), Attention: Bernard Kramer, Esq.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as manual delivery of an original executed counterpart of this Agreement.

16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

17. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

"*Act*" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Basic Prospectus*" shall mean the prospectus referred to in Section 1(a) above contained in the Registration Statement at the Effective Date.

"*Business Day*" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"*Commission*" shall mean the Securities and Exchange Commission.

"*Effective Date*" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Execution Time*" shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

"*Final Prospectus*" shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the Execution Time, together with the Basic Prospectus.

"*Preliminary Final Prospectus*" shall mean any preliminary prospectus supplement to the Basic Prospectus which describes the Securities and the offering

thereof and is used prior to filing of the Final Prospectus, together with the Basic Prospectus.

"*Registration Statement*" shall mean the registration statement referred to in Section 1(a) above, including exhibits and financial statements, as amended at the Execution Time (or, if not effective at the Execution Time, in the form in which it shall become effective) and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A.

"*Rule 415*," "*Rule 424*," "*Rule 430A*" and "*Rule 462*" refer to such rules under the Act.

"*Rule 430A Information*" shall mean information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A.

"*Rule 462(b) Registration Statement*" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement referred to in Section 1(a) hereof.

"*United States Dollars*" shall mean lawful money of the United States of America.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

CONSTELLATION BRANDS, INC.

By: /S/ THOMAS S. SUMMER

Name: Thomas S. Summer
Title: Executive Vice President and Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted as of the date specified in Schedule I hereto.

CITIGROUP GLOBAL MARKETS INC.

By: /s/ GEORGE DOUPSAS

Name: George Doupsas
Title: Vice President

For itself and the other several Underwriters, if any, named in Schedule II to the foregoing Agreement.

SCHEDULE I

Underwriting Agreement dated July 24, 2003

Registration Statement No. 333-63480

Representative(s): Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and UBS Securities LLC

Title, Purchase Price and Description of Securities:

Title: Class A Common Stock, par value $.01 per share

Number of Underwritten Securities to be sold by the Company: 9,500,000

Number of Option Securities to be sold by the Company: 1,425,000

Price to Public per Share (include accrued dividends, if any): $28.00

Price to Public — total: $266,000,000

Underwriting Discount per Share: $1.26

Underwriting Discount — total: $11,970,000

Proceeds to Company per Share: $26.74

Proceeds to Company — total: $254,030,000

Other provisions: N/A

Closing Date, Time and Location: July 30, 2003 at 9:00 a.m. at Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005

Type of Offering: Delayed

Date referred to in Section 5(f) after which the Company may offer or sell securities issued or guaranteed by the Company without the consent of the Representative(s): October 22, 2003

SCHEDULE II

Underwriters	Number of Underwritten Securities To Be Purchased
Citigroup Global Markets Inc.	3,443,750
J.P. Morgan Securities Inc.	3,443,750
UBS Securities LLC	2,612,500
Total	9,500,000

SCHEDULE III

George Bresler
Jeananne K. Hauswald
F. Paul Hetterich
James A. Locke III
Thomas C. McDermott
Paul L. Smith
Thomas S. Summer
Thomas J. Mullin
Alexander L. Berk
Stephen B. Millar
Richard Sands
Robert Sands
Marilyn Sands
W. Keith Wilson
CWC Partnership – I
CWC Partnership – II
Mac & Sally Sands Foundation Incorporated
Marvin Sands Master Trust
Trust for the benefit of the Grandchildren of Marvin and Marilyn Sands

ANNEX I

Form of Opinion of McDermott, Will & Emery

(i) The Company has been duly incorporated and is validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to execute, deliver and perform all of its respective obligations under the Underwriting Agreement and the transactions contemplated therein.

(ii) No consent, approval, authorization, order, registration or qualification of or with any governmental authority or agency or, to our knowledge, any court or similar body is required under the laws of the United States, the State of New York and the General Corporation Law of the State of Delaware for the execution, delivery or performance of the Underwriting Agreement and the transactions contemplated therein by the Company or any Subsidiary, as the case may be, except such as (i) have been obtained under the Act and (ii) may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities by the Underwriters (as to which no opinion is required).

(iii) The execution, delivery and performance of the Underwriting Agreement and the transactions contemplated therein by the Company and the application of the net proceeds from the sale of the Securities in the manner described in the Final Prospectus under the caption "Use of Proceeds" do not and will not (A) conflict with the charter and bylaws of the Company, (B) conflict with, constitute a breach of or a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any lien, security interest or encumbrance upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms of any agreement, stock option plan, stock incentive plan, stock ownership plan, management incentive plan or instrument listed on Exhibit I hereto, (C) contravene the General Corporation Law of the State of Delaware or any statute, rule or regulation under the laws of the United States and the State of New York applicable to the Company or any of its properties or (D) to the knowledge of such counsel, conflict with or violate any judgment, decree or order of any court or governmental agency or court or body applicable to the Company or any of its properties.

(iv) The Underwriting Agreement and the transactions contemplated therein have been duly authorized by the Company. The Underwriting Agreement and any documents relating to the transactions contemplated therein have been duly executed and delivered by the Company, as applicable. The Securities have been duly delivered to the Underwriters by the Company.

(v) The Securities conform in all material respects to the descriptions thereof under the caption "Description of Class A Common Stock" in the Final Prospectus. The statements made in the Final Prospectus under the caption "Certain United States Tax Considerations to Non-United States Holders," insofar as they describe certain matters of law, are accurate in all material respects.

(vi) Neither the Company nor any Subsidiary is required to register under the Investment Company Act of 1940, as amended (the "1940 Act"), as an "investment company" as such term is defined in the 1940 Act.

(vii) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; the Securities are authorized for trading on the New York Stock Exchange; the certificates for the Securities are in valid and sufficient form; and the holders of outstanding shares of capital stock of the Company are not entitled to statutory, or, to the knowledge of such counsel, contractual preemptive or other similar rights to subscribe for the Securities.

(viii) The Securities have been duly and validly authorized and, when issued and delivered to and paid for by the Underwriters pursuant to the Underwriting Agreement, will be fully paid and non-assessable.

(ix) To the knowledge of such counsel, no holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(x) The Registration Statement has become effective under the Act; any required filing of the Basic Prospectus, any Preliminary Final Prospectus and the Final Prospectus, and any supplements thereto, pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened and the Registration Statement and the Final Prospectus (other than the financial statements and other financial information contained therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder.

Such opinion shall also contain a statement that such counsel has participated in conferences with officers and representatives of the Company and the Subsidiaries, and representatives of the independent accountants of the Company and the Underwriters at which the contents of the Registration Statement and the Final Prospectus and related matters were discussed and that although such counsel need not pass upon or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Final Prospectus, and need not make any independent check or verification thereof, except as set forth in paragraph (v) of this form of opinion, based upon the foregoing, no facts came to such counsel's attention to lead such counsel to believe that the Registration Statement, as of the Effective Date or the date the Registration Statement was last deemed amended, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading or that the Final Prospectus (including the documents incorporated therein by reference (except to the extent statements contained in such documents have been modified or superseded by

statements contained in the Final Prospectus)), as of its date and as of the Closing Date, contained an untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading. Such counsel need not express an opinion or belief as to the financial statements, the notes thereto, schedules and other financial data included therein, or incorporated by reference into, or excluded from the Final Prospectus.

In rendering such opinions, such counsel may rely as to matters of fact, to the extent such counsel deems proper, on certificates or statements of responsible officers of the Company and certificates or other written statements of officials of jurisdictions having custody of documents respecting corporate existence or good standing.

EXHIBIT I TO ANNEX I

1. Importer Agreement by and between Barton Beers, Ltd. and Extrade, S.A. de C.V. dated as of November 22, 1996.

2. Barton Incorporated Management Incentive Plan.

3. Barton Brands, Ltd. Deferred Compensation Plan.

4. Marvin Sands Split Dollar Insurance Agreement.

5. Long-Term Stock Incentive Plan, which amends and restates the Canandaigua Wine Company, Inc. Stock Option and Stock Appreciation Right Plan, as amended by Amendment Number One to the Long-Term Stock Incentive Plan of the Company, as further amended by Amendment Number Two to the Long-Term Stock Incentive Plan of the Company, as further amended by Amendment Number Three to the Long-Term Stock Incentive Plan, as further amended by Amendment Number Four to the Long-Term Stock Incentive Plan.

6. Incentive Stock Option Plan of the Company, as amended by Amendment Number One to the Incentive Stock Option Plan of the Company, as further amended by Amendment Number Two to the Incentive Stock Option Plan of the Company, as further amended by Amendment Number Three to the Incentive Stock Option Plan of the Company.

7. Annual Management Incentive Plan of the Company, as amended by Amendment Number One to the Annual Management Incentive Plan of the Company, as further amended by Amendment Number Two to the Company's Annual Management Incentive Plan.

8. Implementation Deed, dated as of January 17, 2003, between Hardy Wine Company Limited (f/k/a BRL Hardy Limited) and Constellation Brands, Inc.

Form of Opinion of Nixon Peabody LLP

(i) The Company is duly qualified and in good standing as a foreign corporation in each jurisdiction listed for it on Exhibit I attached hereto. The Company has all requisite corporate power to own, lease and license its respective properties and conduct its business as now being conducted and as described in the Final Prospectus.

(ii) To the best knowledge of such counsel after due inquiry, except as described or referred to in the Final Prospectus: there is not pending or threatened any action, suit, proceeding, inquiry or investigation, to which the Company is a party, or to which the property of the Company is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company, will individually or in the aggregate result in any material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Subsidiaries taken as a whole or will materially adversely affect the consummation of the transactions contemplated by the Final Prospectus; and all pending legal or governmental proceedings to which the Company is a party or that affect any of their respective properties, that are not described in the Final Prospectus, including ordinary routine litigation incidental to the business, considered in the aggregate, will not result in a material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Subsidiaries taken as a whole.

(iii) The outstanding shares of Common Stock (other than the Securities) have been duly and validly authorized and are fully paid and non-assessable; and except as set forth in the Final Prospectus, the Incorporated Documents or the Constellation Brands UK Sharesave Scheme, no options, warrants or other rights to purchase, agreements or other obligations to issue or rights to convert any obligations into or exchange any securities for shares of capital stock of or ownership interest in the Company are outstanding.

(iv) The execution, delivery and performance of the Underwriting Agreement and the transactions contemplated therein by the Company and the application of the net proceeds from the sale of the Securities in the manner described in the Final Prospectus under the caption “Use of Proceeds” do not and will not conflict with, constitute a breach of or a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any lien, security interest or encumbrance upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms the Credit Agreement or any other indenture, mortgage, deed of trust, loan or credit agreement, bond, debenture, note, lease or other agreement or instrument listed on Exhibit II hereto.

(v) Each of the documents filed by the Company under the Exchange Act and incorporated by reference into the Final Prospectus (collectively, the “*Documents*”), at the

time it was filed with the Commission, appeared on its face to be appropriately responsive in all material respects to the requirements of the Exchange Act, and the rules and regulations as promulgated by the Commission under the Exchange Act, except that such counsel need not express any opinion as to the financial statements, schedules, and other financial data included therein or incorporated by reference therein, or excluded therefrom or the exhibits thereto (except to the extent set forth in the next sentence of this paragraph) and such counsel need not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Documents. To such counsel's knowledge without having made any independent investigation and based upon representations of officers of the Company as to factual matters, there were no contracts or documents required to be filed as exhibits to such Documents on the date they were filed which were not so filed.

Company	Foreign Qualifications
Constellation Brands, Inc.	New York Florida Georgia Michigan Oklahoma New Hampshire North Carolina New Jersey

EXHIBIT II TO ANNEX II

1. Indenture dated as of February 25, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank as trustee, as amended by (i) Supplemental Indenture No. 1 dated as of February 25, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank as trustee, (ii) Supplemental Indenture No. 2 dated as of August 4, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank, as trustee, (iii) Supplemental Indenture No. 3 dated as of August 6, 1999 among the Company, the New Guarantors named therein and Harris Trust and Savings Bank, as trustee, (iv) Supplemental Indenture No. 4, dated as of May 15, 2000 among the Company, as Issuer, its principal operating subsidiaries, as Guarantors and Harris Trust and Savings Bank, as trustee, as further amended by Supplemental Indenture No. 5, dated as of September 14, 2000 by and among the Company, as Issuer, its principal operating subsidiaries as Guarantors and The Bank of New York, as trustee, (v) Supplemental Indenture No. 6, dated as of August 21, 2001, among the Company, Ravenswood Winery, Inc. and BNY Midwest Trust Company (successor trustee to Harris Trust and Savings Bank and the Bank of New York, as applicable), as trustee, (vi) Supplemental Indenture No. 7, dated as of January 23, 2002, by and among the Company, as Issuer, certain principal subsidiaries, as Guarantors, and BNY Midwest Trust Company, as trustee, and (vii) Supplemental Indenture No. 8, dated as of March 27, 2003, by and among the Company, CBI Australia Pty Limited and BNY Midwest Trust Company, as trustee.

2. Indenture dated as of November 17, 1999 among the Company, as Issuer, certain principal subsidiaries, as Guarantors and Harris Trust and Savings Bank, as trustee, as amended by (i) Supplemental Indenture No. 1, dated as of August 21, 2001, among the Company, Ravenswood Winery, Inc. and BNY Midwest Trust Company, as trustee, (ii) Supplemental Indenture No. 2, dated as of March 27, 2003 among the Company, CBI Australia Holdings Pty Limited, and BNY Midwest Trust Company, as trustee.

3. Amended and Restated Credit Agreement, dated as of March 19, 2003, between the Company, the guarantors named therein, the lenders signatory thereto, JPMorgan Chase Bank, as Administrative Agent, and J.P. Morgan Europe Limited, as London Agent.

4. Amended and Restated Bridge Loan Agreement, dated as of January 16, 2003, amended and restated as of March 26, 2003, between the Company, the guarantors party thereto, the lenders party thereto and JPMorgan Chase Bank, as Administrative Agent.

EXHIBIT A

<u>Constellation Brands, Inc.</u>
<u>Public Offering of</u>
<u>Series A Mandatory Convertible Preferred Stock</u>
<u>and Class A Common Stock</u>

July 24, 2003

J.P. MORGAN SECURITIES INC.
CITIGROUP GLOBAL MARKETS INC.
UBS SECURITIES LLC
SUNTRUST CAPITAL MARKETS, INC.

Ladies and Gentlemen:

This letter is being delivered to you (the "*Representatives*") in connection with (i) the proposed Underwriting Agreement (the "*Common Stock Underwriting Agreement*"), between Constellation Brands, Inc., a Delaware corporation (the "*Company*"), and each of you as representatives of a group of underwriters named therein (the "*Common Stock Underwriters*"), relating to an underwritten public offering of Class A Common Stock, $.01 par value (the "*Common Stock*"), of the Company and (ii) the proposed Underwriting Agreement (the "*Depositary Share Underwriting Agreement*"), between the Company and each of you as representatives of a group of underwriters named therein (the "*Depositary Share Underwriters*" and, together with the Common Stock Underwriters, the "*Underwriters*"), relating to an underwritten public offering of Depositary Shares, each representing 1/40 of a share of Series A Mandatory Convertible Preferred Stock, $.01 par value (the "*Preferred Stock*"), of the Company (the Common Stock Underwriting Agreement together with the Preferred Stock Underwriting Agreement, the "*Underwriting Agreements*").

In order to induce you and the other Underwriters to enter into the Underwriting Agreements, the undersigned will not, without the prior written consent of each of Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect

to, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Underwriting Agreements, other than (i) shares of Common Stock disposed of as bona fide gifts; *provided*, *however*, that the recipient of such Common Stock agrees in writing to be bound by the terms hereof[1] and (ii) in connection with the exercise of stock options, a number of shares of Common Stock having a value not to exceed the aggregate of the exercise price and any tax withholding due with respect to the options exercised.

If for any reason either of the Underwriting Agreements shall be terminated prior to the Closing Date (as defined in the applicable Underwriting Agreement), the agreement set forth above shall likewise be terminated, but shall remain in full force and effect with respect to any Underwriting Agreement that has not been terminated.

Yours very truly,

____

Name:
Address:

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[1] Each of the first fourteen individuals named on Schedule III to the Underwriting Agreements may make bona fide gifts of up to a maximum aggregate of 7,500 shares of Common Stock within a period of 90 days after the date of the Underwriting Agreements to recipients of such Common Stock who do not agree in writing to be bound by the terms hereof.

Exhibit 1.2

EXECUTION COPY

Constellation Brands, Inc.

Depositary Shares Each Representing 1/40 of a Share of
Series A Mandatory Convertible Preferred Stock

Underwriting Agreement

New York, New York
July 24, 2003

To the Representatives named in Schedule I hereto
of the Underwriters named in Schedule II hereto

Ladies and Gentlemen:

Constellation Brands, Inc., a corporation incorporated under the laws of the State of Delaware (the "*Company*"), proposes to sell to the several underwriters named in Schedule II hereto (the "*Underwriters*"), for whom you (the "*Representatives*") are acting as representatives, the number of depositary shares (the "*Depositary Shares*") each representing 1/40 of a share of Series A Mandatory Convertible Preferred Stock, par value $.01 per share (the "*Preferred Stock*"), of the Company set forth in Schedule I hereto (said Depository Shares to be sold by the Company being hereinafter called the "*Underwritten Securities*"). The Company also proposes to grant to the Underwriters an option to purchase up to the number of additional Depositary Shares set forth in Schedule I hereto to cover over-allotments (the "*Option Securities*"; the Option Securities, together with the Underwritten Securities, being hereinafter called the "*Securities*"). Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be (the "*Incorporated Documents*"); and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference.

The Securities are convertible into shares of Class A Common Stock, par value $.01 (the "*Common Stock*"), of the Company at the conversion prices set forth in the Prospectus. The shares of Preferred Stock represented by the Securities are to be deposited by the Company against delivery of Depositary Receipts (the "*Depositary Receipts*") evidencing the

Depositary Shares which are to be issued by Mellon Investor Services LLC, as Depositary (the "*Depositary*"), under a Deposit Agreement, to be dated as of July 30, 2003 (the "*Deposit Agreement*"), among the Company, the Depositary and the holders from time to time of the Depositary Receipts issued thereunder. Each Depositary Share will represent beneficial ownership of 1/40 of a share of Preferred Stock and shares of Common Stock issuable upon conversion of, or payable as dividends on, the Preferred Stock. Certain terms used herein are defined in Section 18 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission a registration statement (the file number of which is set forth in Schedule I hereto) on Form S-3, including a related basic prospectus, for registration under the Act of the offering and sale of the Securities, the Preferred Stock represented by the Securities and the shares of Common Stock issuable by the Company upon conversion of such Preferred Stock (the "*Common Stock Shares*"). The Company may have filed one or more amendments thereto, including a Preliminary Final Prospectus, each of which has previously been furnished to the Representatives. The Company will next file with the Commission one of the following: (1) after the Effective Date of such registration statement, a final prospectus supplement relating to the Securities, the Preferred Stock represented by the Securities and the Common Stock Shares in accordance with Rules 430A and 424(b), (2) prior to the Effective Date of such registration statement, an amendment to such registration statement (including the form of final prospectus supplement) or (3) a final prospectus in accordance with Rules 415 and 424(b). In the case of clause (1), the Company has included in such registration statement, as amended at the Effective Date, all information (other than Rule 430A Information) required by the Act and the rules thereunder to be included in such registration statement and the Final Prospectus. As filed, such final prospectus supplement or such amendment and form of final prospectus supplement shall contain all Rule 430A Information, together with all other such required information, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to the Representatives prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and any Preliminary Final Prospectus) as the Company has advised the Representatives, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x).

(b) On the Effective Date the Registration Statement did or will, and when the Final Prospectus is first filed (if required) in accordance with Rule 424(b) and on the Closing Date (as defined herein) and on any date on which Option Securities are

purchased, if such date is not the Closing Date (a "*settlement date*"), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder; on the Effective Date and at the Execution Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not, include any 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; *provided*, *however*, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto).

(c) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; all outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable; the Securities have been duly and validly authorized and, when issued and delivered to and paid for by the Underwriters pursuant to this Agreement, will be fully paid and non-assessable and will conform to the description thereof in the Final Prospectus; the shares of Preferred Stock represented by the Securities, and the deposit of such Preferred Stock by the Company in accordance with the Deposit Agreement, have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Deposit Agreement, such shares of Preferred Stock will be validly issued, fully paid and non-assessable; the certificates for the Securities and the shares of Preferred Stock represented thereby are in valid and sufficient form; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities or the shares of Preferred Stock represented thereby; assuming due authorization, execution and delivery of the Deposit Agreement by the Depositary, each Depositary Share will represent the interest described in the Prospectus in a validly issued, outstanding, fully paid and non-assessable share of Preferred Stock; assuming due execution and delivery of the Depositary Receipts, if any, by the Depositary pursuant to such Deposit Agreement, the Depositary Receipts will entitle the holders thereof to the benefits provided therein and in the Deposit Agreement; the Common Stock Shares have been duly authorized and validly reserved for issuance upon conversion of the Preferred Stock and are free of statutory preemptive and other similar contractual rights and are sufficient in num-

ber to meet current conversion requirements; the Common Stock Shares, when so issued upon such conversion in accordance with the terms of the Certificate of Designations, will be validly issued and fully paid and non-assessable; and, except as set forth in the Final Prospectus, the Incorporated Documents or the Constellation Brands Long-Term Stock Incentive Plan, Incentive Stock Option Plan, 1989 Stock Purchase Plan or UK Sharesave Scheme, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding.

(d) No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(e) The resolution set forth in the certificate of designations of the Preferred Stock, the form of which is attached hereto as Annex I (the "*Certificate of Designations*"), has been duly adopted by a duly authorized committee of the Board of Directors of the Company, has not been modified, amended or revoked, is in full force and effect on the date hereof and is the only resolution adopted by the Board of Directors of the Company or any committee thereof relating to the number of authorized shares of or the rights, powers and preferences, and the qualifications, limitations and restrictions thereof, of the Preferred Stock; the execution of the Certificate of Designations by the Company and the filing of the Certificate of Designations with the Secretary of State of the State of Delaware (the "*Secretary of State*") on behalf of the Company have been duly authorized by such duly authorized committee of the Board of Directors of the Company.

(f) The Incorporated Documents, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further Incorporated Documents, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not 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.

(g) The Company and each of its consolidated subsidiaries (the "*Subsidiaries*") have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, with full power and authority (corporate and other) to own their properties and conduct their re-

spective businesses as described in the Final Prospectus and are duly qualified to transact business as foreign corporations in good standing under the laws of each jurisdiction where the ownership or leasing of their respective properties or the conduct of their respective businesses requires such qualification, except where the failure to so qualify would not have a material adverse effect on the business, management, condition (financial or otherwise), results of operations or business prospects of the Company and the Subsidiaries considered as a whole (a "*Material Adverse Effect*"); the Company had at the dates indicated an authorized capitalization as set forth in the Final Prospectus, and the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and the outstanding shares of capital stock that the Company owns (directly or indirectly) of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and (except for directors' qualifying shares) are owned beneficially by the Company free and clear of all liens, encumbrances, equities and claims (collectively, "*Liens*") except for the Liens under the Amended and Restated Credit Agreement, dated as of March 19, 2003, between the Company, the guarantors named therein, the lenders signatory thereto, JPMorgan Chase Bank, as Administrative Agent, and J.P. Morgan Europe Limited, as London Agent (the "*Credit Agreement*"). Neither the Company nor any Subsidiary is in violation of its respective charter or bylaws and neither the Company nor any of the Subsidiaries is in default (nor has an event occurred with notice, lapse of time or both that would constitute a default) in the performance of any obligation, agreement or condition contained in any agreement, lease, indenture or instrument of the Company or any Subsidiary where such violation or default would have a Material Adverse Effect.

(h) The Company has full power and authority to enter into this Agreement and the Deposit Agreement, to consummate the transactions contemplated herein and therein, to issue, sell and deliver the Securities to be sold by it to the Underwriters as provided herein, to issue and deliver the shares of Preferred Stock represented thereby and to issue and deliver the Common Stock Shares. The execution, delivery and performance of this Agreement, the Deposit Agreement and the Certificate of Designations by the Company, the consummation of the transactions contemplated herein and therein, the issuance, sale and delivery of the Securities, the issuance and delivery of the shares of Preferred Stock represented thereby and the issuance and delivery of the Common Stock Shares do not and will not conflict with or result in a breach or violation by the Company or any Subsidiary, as the case may be, of any of the terms or provisions of, constitute a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any Liens upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms of, (1) the Credit Agreement and any other indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any Subsidiary, as the case may be, is a party or to which any of them or any of their respective properties is subject, (2) the charter (as amended by the Certificate of Designations) or by-

laws of the Company or any Subsidiary, as the case may be, or (3) any statute, judgment, decree, order, rule or regulation of any foreign or domestic court, governmental agency or regulatory agency or body having jurisdiction over the Company or any of the Subsidiaries or any of their respective properties or assets except, with respect to clauses (1) and (3) of this Section 1(h), for any conflict, breach, violation, default or Liens that would not have a Material Adverse Effect.

(i) No consent, approval, authorization, order, registration or qualification of or with any governmental authority or agency or any court or similar body is required for the execution, delivery or performance of this Agreement, the Deposit Agreement or the Certificate of Designations by the Company or the transactions contemplated herein or therein, the issuance, sale and delivery of the Securities, the issuance and delivery of the shares of Preferred Stock represented thereby or the issuance and delivery of the Common Stock Shares, except such as (1) have been obtained under the Act and (2) may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities by the Underwriters.

(j) The execution and delivery of this Agreement by the Company has been duly authorized by all necessary corporate action, and this Agreement has been duly executed and delivered by the Company and is the valid and legally binding agreement of the Company.

(k) The execution and delivery of the Deposit Agreement by the Company has been duly authorized by all necessary corporate action.

(l) Except as described or referred to in the Final Prospectus, there is not pending, or to the knowledge of the Company threatened, any action, suit, proceeding, inquiry or investigation to which the Company or any of the Subsidiaries is a party, or to which the property of the Company or any of the Subsidiaries is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company or any of the Subsidiaries, would, individually or in the aggregate, have a Material Adverse Effect or might materially adversely affect the consummation of the offering of the Securities pursuant to this Agreement, the issuance of the shares of Preferred Stock represented thereby or the issuance of the Common Stock Shares issuable upon conversion of the Securities; and all pending legal or governmental proceedings to which the Company or any of the Subsidiaries is a party or that affect any of their respective properties that are not described in the Final Prospectus, including ordinary routine litigation incidental to the business, would not, in the aggregate, result in a Material Adverse Effect.

(m) KPMG LLP are independent certified public accountants with respect to the Company and the Subsidiaries within the meaning of the Act and the applicable published rules and regulations thereunder. PricewaterhouseCoopers are independent

certified public accountants with respect to Hardy Wine Company Limited ("*Hardy*") and its subsidiaries under Australian Statement of Auditing Practice AUP 32, "Audit Independence," and The Institute of Chartered Accountants in Australia's Code of Professional Conduct. Arthur Andersen LLP previously served as the Company's auditors and during such service were independent certified public accountants with respect to the Company and its then subsidiaries within the meaning of the Act and the applicable published rules and regulations thereunder (as in effect during such service). The historical financial statements of the Company (including the related notes) incorporated by reference in the Final Prospectus comply as to form in all material respects with the requirements applicable to a registration statement on Form S-3 under the Act; such historical financial statements have been prepared in accordance with United States generally accepted accounting principles ("*GAAP*") consistently applied throughout the periods covered thereby (other than as the result of the application of Statement of Financial Accounting Standards No. 142) and present fairly in all material respects the financial position of the Company at the respective dates indicated and the results of its operations and cash flows and statements of stockholders' equity for the respective periods indicated. The historical financial statements of Hardy (including the related notes) incorporated by reference in the Final Prospectus have been prepared in accordance with Australian GAAP consistently applied throughout the periods covered thereby and present fairly in all material respects the financial position of Hardy at the respective dates indicated and its financial performance and cash flows for the respective periods indicated and such historical financial statements have to the extent required by the Commission for each period presented been properly reconciled to United States GAAP and contain a discussion of all material differences between United States GAAP and Australian GAAP as they relate to Hardy. The historical financial information of Hardy incorporated by reference in the Final Prospectus and converted into United States Dollars has been so converted on a consistent basis in accordance with United States GAAP and the rules and regulations of the Commission. The financial information included in or incorporated by reference in the Final Prospectus and relating to the Company is derived from the accounting records of the Company and the Subsidiaries and presents fairly in all material respects the information purported to be shown thereby. The unaudited pro forma combined financial statements included in or incorporated by reference in the Final Prospectus have been prepared on a basis consistent with the historical financial statements included in or incorporated by reference in the Final Prospectus (except for the pro forma adjustments specified therein), include all material adjustments to the historical financial statements required by Rule 11-02 of Regulation S-X under the Act and the Exchange Act to reflect the acquisition of Hardy described in the Final Prospectus or in the documents incorporated therein by reference, are based on assumptions made on a reasonable basis and present fairly such acquisition described in the Final Prospectus or in the documents incorporated therein by reference. The other historical financial and statistical information and data included in the Final Prospectus or in the documents

incorporated therein by reference presents fairly in all material respects the information purported to be shown thereby.

(n) Except as described in or contemplated by the Final Prospectus, subsequent to May 31, 2003, (i) neither the Company nor any of the Subsidiaries has sustained any loss or interference with its business or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree which would have a Material Adverse Effect; and (ii) there has not been any change in the capital stock (other than as a result of the exercise of the Company's outstanding stock options, purchases under the Company's 1989 Employee Stock Purchase Plan, as amended, any purchases under the Company's UK Sharesave Scheme, any repurchases by the Company under its Stock Repurchase Program or as a result of the conversion of the Company's Class B Common Stock (par value $.01 per share) into Common Stock) or any net increase in long-term debt (exclusive of any currency translation effect) of the Company or any of the Subsidiaries, or any other material adverse change, or any development involving a prospective material adverse change, in or affecting the business, condition (financial or otherwise), prospects or operations of the Company and the Subsidiaries taken as a whole.

(o) The Company and each of the Subsidiaries has good and marketable title to all properties and assets, as described in the Final Prospectus as owned by it free and clear of all Liens, except as provided under the Credit Agreement and as such as are described in the Final Prospectus or do not interfere with the use made and proposed to be made of such properties and assets by the Company and the Subsidiaries and would not individually or in the aggregate result in a Material Adverse Effect; and all of the leases and subleases material to the business of the Company and the Subsidiaries taken as a whole, and under which the Company or any of the Subsidiaries holds properties described in the Final Prospectus, are in full force and effect and neither the Company nor any of the Subsidiaries has any notice of any claims of any sort that have been asserted by anyone adverse to the rights of the Company or any of the Subsidiaries under such leases or subleases, or affecting or questioning the rights of the Company or any of the Subsidiaries to the continued possession of the leased or subleased premises under any such lease or sublease, which claims would have a Material Adverse Effect.

(p) The Company and each of the Subsidiaries owns or possesses all governmental and other licenses, permits, certificates, consents, orders, approvals and other authorizations necessary to own, lease and operate its properties and to conduct its business as presently conducted by it and described in the Final Prospectus, except where the failure to own or possess such licenses, permits, certificates, consents, orders, approvals and other authorizations would not, individually or in the aggregate, have a Material Adverse Effect (collectively, the "*Material Licenses*"); all of the Ma-

terial Licenses are valid and in full force and effect, except where the invalidity of a Material License or the failure of such Material License to be in full force and effect would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of its Subsidiaries has received any notice of proceedings relating to revocation or modification of any such Material License which would, individually or in the aggregate, have a Material Adverse Effect.

(q) The Company and each of the Subsidiaries owns or possesses, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, trademarks, service marks, trade names and know-how (including trade secrets and other patentable and/or unpatentable proprietary or confidential information or procedures) (collectively, "*intellectual property*") necessary to carry on its business as presently operated by it, except where the failure to own or possess or have the ability to acquire any such intellectual property would not, individually or in the aggregate, have a Material Adverse Effect; and none of the Company or any of the Subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any intellectual property or of any facts which would render any intellectual property invalid or inadequate to protect the interest of the Company or any of the Subsidiaries therein and which infringement or conflict would have a Material Adverse Effect.

(r) None of the Company or any of the Subsidiaries has taken, or will take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities.

(s) None of the Company or any of its Subsidiaries is an investment company required to be registered under the Investment Company Act of 1940, as amended.

(t) Except as described in the Final Prospectus, the Company and the Subsidiaries comply in all material respects with all Environmental Laws (as defined below), except to the extent that failure to comply with such Environmental Laws would not individually or in the aggregate have a Material Adverse Effect. None of the Company or any of the Subsidiaries is the subject of any pending or, to the knowledge of the Company, threatened foreign, federal, state or local investigation evaluating whether any remedial action by the Company or any of the Subsidiaries is needed to respond to a release of any Hazardous Materials (as defined below) into the environment, resulting from the Company's or any of the Subsidiaries' business operations or ownership or possession of any of their properties or assets or is in contravention of any Environmental Law that would, individually or in the aggregate, have a Material Adverse Effect. None of the Company or any of the Subsidiaries has received any notice or claim, nor are there pending or, to the knowledge of the Company, threatened lawsuits against them, with respect to violations of an Environmental Law or in con-

nection with any release of any Hazardous Material into the environment that would have a Material Adverse Effect. As used herein, "*Environmental Laws*" means any foreign, federal, state or local law or regulation applicable to the Company's or any of the Subsidiaries' business operations or ownership or possession of any of their properties or assets relating to environmental matters, and "*Hazardous Materials*" means those substances that are regulated by or form the basis of liability under any Environmental Laws.

(u) Neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of the Subsidiaries has taken any action, directly or indirectly, that would result in a violation of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder (the "*FCPA*"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, other than violations that, individually or in the aggregate, would not have a Material Adverse Effect. The Company, the Subsidiaries and, to the knowledge of the Company, its affiliates have conducted their respective businesses in compliance in all material respects with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(v) The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "*Money Laundering Laws*") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of the Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(w) Neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of the Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("*OFAC*"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities contemplated by this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the

purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(x) No relationship, direct or indirect, exists between or among the Company and the Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, which is not described in the Final Prospectus or incorporated therein by reference which would have a Material Adverse Effect.

(y) No labor problem exists with the employees of the Company or any of the Subsidiaries or, to the knowledge of the Company, is imminent that, in either case, would have a Material Adverse Effect.

(z) Except as disclosed in the Final Prospectus, all U.S. federal income tax returns and all foreign tax returns of the Company and the Subsidiaries required by law to be filed have been filed (taking into account extensions granted by the applicable governmental agency) and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the payment of which would not individually or in the aggregate result in a Material Adverse Effect. All other corporate franchise and income tax returns of the Company and the Subsidiaries required to be filed pursuant to applicable foreign, federal, state or local laws have been filed, except insofar as the failure to file such returns would not individually or in the aggregate result in a Material Adverse Effect, and all taxes shown on such returns or otherwise assessed which are due and payable have been paid, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except for such taxes the payment of which would not, individually or in the aggregate, result in a Material Adverse Effect.

(aa) The Company and each of the Subsidiaries maintains (and in the future will maintain) a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(bb) The Company and each of the Subsidiaries is in compliance with, and none of such entities has received any notice of any outstanding violation of, all laws, regulations, ordinances and rules applicable to it and its operations, except, in either

case, where any failure by the Company or any of the Subsidiaries to comply with any such law, regulation, ordinance or rule would not, individually or in the aggregate, result in a Material Adverse Effect.

(cc) Neither the issuance, sale or delivery of the Securities nor the application of the proceeds thereof by the Company as set forth in the Final Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(dd) The Company is, and immediately after the Closing Date will be, Solvent. As used herein, the term "*Solvent*" means, with respect to any such entity on a particular date, that on such date (1) the fair market value of the assets of such entity is greater than the amount that will be required to pay the probable liabilities of such entity on its debts as they become absolute and matured, (2) assuming the sale of the Securities as contemplated by this Agreement and as described in the Final Prospectus, such entity is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (3) such entity is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (4) such entity does not have unreasonably small capital.

(ee) Other than this Agreement, neither the Company nor any Subsidiary is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against the Company or any Subsidiary or any Underwriters for a brokerage commission, finders' fee or like payment in connection with the offering and sale of the Securities.

(ff) No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained in the Final Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

Any certificate signed by an officer of the Company and delivered to the Underwriters or to counsel for the Underwriters at or prior to the Closing Date pursuant to any section of this Agreement or the transactions contemplated hereby shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

2. Purchase and Sale

(a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at a purchase price of $24.25 per share, the number of the Underwritten Securities set forth opposite

such Underwriter's name in Schedule II hereto. The initial public offering price of the Underwritten Securities shall not exceed the public offering price recommended by the Independent Underwriter (as defined herein).

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 820,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written notice by the Representatives to the Company setting forth the number of the Option Securities as to which the several Underwriters are exercising the option and the settlement date. The number of shares of the Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as the Representatives in their absolute discretion shall make to eliminate any fractional shares.

3. Delivery and Payment. Delivery of and payment for the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made on the date and at the time specified in Schedule I hereto or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "*Closing Date*"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

The Company will pay all applicable state transfer taxes, if any, involved in the transfer to the Underwriters of the Securities and the Underwriters will pay any additional stock transfer taxes involved in further transfers.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company

by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) The Company will use its best efforts to cause the Registration Statement, if not effective at the Execution Time, and any amendment thereof, to become effective. Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished the Representatives a copy for their review prior to filing and will not file any such proposed amendment or supplement to which the Representatives reasonably object. Subject to the foregoing sentence, if the Registration Statement has become or becomes effective pursuant to Rule 430A, or filing of the Final Prospectus is otherwise required under Rule 424(b), the Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the Representatives (1) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (2) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (3) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (4) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (5) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (6) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities or the Common Stock Shares is required to be delivered under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, the Company promptly will (1) notify the Representatives of such event, (2) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement which will correct such statement or omission or effect such compliance and (3) supply any supplemented Final Prospectus to the Representatives in such quantities as the Representatives may reasonably request.

(c) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act, as many copies of each Preliminary Final Prospectus and the Final Prospectus and any supplement thereto as the Representatives may reasonably request. The Company will pay the expenses of printing or other production of all documents relating to the offering.

(e) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate, will maintain such qualifications in effect so long as required for the distribution of the Securities and will pay any fee of the National Association of Securities Dealers, Inc. in connection with its review of the offering; *provided, however*, that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject.

(f) The Company will not, without the prior written consent of each of Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., offer, sell, contract to sell, pledge, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the

Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of Common Stock (other than the shares of Common Stock being offered in an underwritten public offering pursuant to the Prospectus Supplement dated July 24, 2003) or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock (other than the Securities), or publicly announce an intention to effect any such transaction, until the Business Day set forth on Schedule I hereto, *provided*, *however*, that (i) the Company may issue and sell Common Stock pursuant to any stock option plan, stock incentive plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the Execution Time (including pursuant to a registration statement on Form S-8 filed after the Execution Time relating to shares of Common Stock to be issued under such employee stock option plans, stock ownership plans or dividend reinvestment plans), (ii) the Company may issue Common Stock (a) upon the conversion of the Securities in accordance with their terms and (b) in such amounts as is necessary to pay accrued and unpaid dividends in the form of shares of Common Stock on the Securities, (iii) the Company may file a shelf registration statement on Form S-3 after the Execution Time relating to, among other things, shares of Common Stock; *provided, however,* that the Company may not offer shares of Common Stock using such shelf registration statement until the Business Day set forth on Schedule I hereto except as permitted by clause (ii) hereof.

(g) The Company will use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Prospectus Supplement under the caption "Use of Proceeds." The Company will use the net proceeds received by it from the sale of shares of Common Stock pursuant to the Prospectus Supplement dated July 24, 2003 in the manner specified in such Prospectus Supplement under the caption "Use of Proceeds."

(h) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(i) The Company will reserve and keep available at all times, free of preemptive rights, the full number of shares of Common Stock issuable upon conversion of the Securities.

(j) Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion prices relating to the Securities set forth in the Final Prospectus.

(k) At any time that the number of authorized but unissued shares of Common Stock (or Common Stock held in treasury and available for such purpose) shall be less than the aggregate number of shares of Common Stock into which the Preferred Stock then outstanding shall be convertible, the Company will take such action as is necessary to increase the number of shares which the Company is authorized to issue so that the Company will have a sufficient number of shares of Common Stock available for conversion of the Preferred Stock then outstanding.

(l) The Company agrees to pay the Independent Underwriter $50,000 for serving as a "qualified independent underwriter" (within the meaning of National Association of Securities Dealers, Inc. Conduct Rule 2720 ("*Rule 2720*")) in connection with the offering and sale of the Securities.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Underwritten Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If the Registration Statement has not become effective prior to the Execution Time, unless the Representatives agree in writing to a later time, the Registration Statement will become effective not later than (i) 6:00 PM New York City time on the date of determination of the public offering price, if such determination occurred at or prior to 3:00 PM New York City time on such date or (ii) 9:30 AM on the Business Day following the day on which the public offering price was determined, if such determination occurred after 3:00 PM New York City time on such date; if filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, will be filed in the manner and within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have requested and caused:

(i) McDermott, Will & Emery, special counsel for the Company, to have furnished to the Underwriters their written opinion addressed to the Underwriters, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially in the form of Annex II hereto;

(ii) Nixon Peabody LLP, counsel for the Company, to have furnished to the Underwriters their written opinion addressed to the Underwriters,

dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, substantially in the form of Annex III hereto.

(c) The Representatives shall have received from Cahill Gordon & Reindel LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Registration Statement, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Final Prospectus, any supplements to the Final Prospectus and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company’s knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(e) The Company shall have requested and caused KPMG LLP to have furnished to the Representatives, at the Execution Time and at the Closing Date, letters (which may refer to letters previously delivered to one or more of the Representatives), dated respectively as of the Execution Time and as of the Closing Date, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants’ “comfort letters” to underwriters

with respect to the financial statements and certain financial information included or incorporated by reference in the Registration Statement and the Final Prospectus.

References to the Final Prospectus in this paragraph (e) include any supplement thereto at the date of the letter.

(f) The Company shall have requested and caused PricewaterhouseCoopers to have furnished to the Representatives, at the Execution Time, a letter, dated as of the Execution Time, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information relating to Hardy included or incorporated by reference in the Registration Statement and the Final Prospectus.

References to the Final Prospectus in this paragraph (f) include any supplement thereto at the date of the letter.

(g) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraphs (e) through (f) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and the Subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto).

(h) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(i) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(j) The Securities shall have been listed and admitted and authorized for trading on the New York Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives.

(k) At the Execution Time, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit A hereto from each person or entity that is identified on Schedule III hereto, addressed to the Representatives.

(l) The Certificate of Designations shall have been duly filed with the Secretary of State and shall have become effective under the General Corporation Law of the State of Delaware.

(m) The Common Stock Shares shall have been approved for listing on the New York Stock Exchange, subject only to notice of issuance.

(n) The Independent Underwriter shall have delivered to the Company, J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and UBS Securities LLC a letter substantially in the form of Exhibit B hereto.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Cahill Gordon & Reindel LLP, counsel for the Underwriters, at 80 Pine Street, New York, New York 10005, on the Closing Date.

7. Reimbursement of Expenses.

(a) On the Closing Date, the Underwriters shall reimburse the Company for up to $845,743.00 of documented expenses incurred by the Company in connection with the transactions; *provided*, *however,* that any reimbursement by the Underwriters pursuant to paragraph (a) of this Section 7 shall be made without duplication of any reimbursement made by the Underwriters pursuant to Section 7(a) of the Underwriting Agreement dated the date hereof between the Company and the underwriters named therein relating to an underwritten public offering of Common Stock.

(b) If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof

is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through the Representatives on demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter, its officers and directors, each person, if any, who controls any Underwriter and each affiliate of any Underwriter which assists such Underwriter in the distribution of the Securities, within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, the legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted) caused by any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or any amendment thereof, or in the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), 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 or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless each of the Company, its directors, its officers and each person who controls the Company within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to such losses, claims, damages or liabilities which are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion therein. The Company acknowledges that the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and, under the heading "Underwriting," (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions and reallowances and (iii) the paragraphs related to stabilization, syndicate covering transactions and penalty bids in any Preliminary Final Prospectus and the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Final Prospectus or the Final Prospectus.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (the "*Indemnified Person*") shall promptly notify the person or persons against whom such indemnity may be sought (each an "*Indemnifying Person*") in writing, and such Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 8 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) such Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary, (ii) such Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to such Indemnified Person or (iii) the named parties in any such proceeding (including any impleaded parties) include an Indemnifying Person and an Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that an Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for any Underwriter, each affiliate of any Underwriter which assists such Underwriter in the distribution of the Securities and such control persons of any Underwriter shall be designated in writing by the Representatives, and any such separate firm for the Company, their respective directors, their respective officers and such control persons of any of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, such Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in the first and second paragraphs of this Section 8 is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then the Company and the Underwriters severally agree to contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities; *provided*, *however*, that in no case shall (x) any Underwriter (except as may be provided in an agreement among underwriters relating

to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter or (y) SunTrust Capital Markets, Inc., through its SunTrust Robinson Humphrey Capital Markets Division (the "*Independent Underwriter*"), in its capacity as "qualified independent underwriter" (within the meaning of Rule 2720), be responsible for any amount in excess of the compensation received by the Independent Underwriter for acting in such capacity 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 Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds from the offering and sale of the Securities (before deducting expenses) received by the Company and the total underwriting commissions received by the Underwriters, in each case as set forth in the table on the cover of the Final Prospectus. Benefits received by the Independent Underwriter in its capacity as "qualified independent underwriter" shall be deemed to be equal to the compensation received by the Independent Underwriter for acting in such capacity. The relative fault of the Company on the one hand and the Underwriters on the other 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 by the Underwriters on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and each of the Underwriters severally agree that it would not be just and equitable if contribution pursuant to this Section 8 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 Person as a result of the losses, claims, damages and liabilities 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 Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, in no event shall any Underwriter be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter 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.

(f) 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.

(g) The indemnity and contribution agreements contained in this Section 8 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter or by or on behalf of the Company, its respective officers or directors or any other person controlling the Company and (iii) acceptance of and payment for any of the Securities.

(h) Without limitation of and in addition to its obligations under the other paragraphs of this Section 8, the Company agrees to indemnify and hold harmless the Independent Underwriter, its directors, officers, employees and agents and each person who controls the Independent Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject, insofar as such losses, claims, damages or liabilities (or action in respect thereof) arise out of or are based upon the Independent Underwriter's acting as a "qualified independent underwriter" (within the meaning of Rule 2720) in connection with the offering contemplated by this Agreement, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability results from the gross negligence or willful misconduct of the Independent Underwriter.

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule II hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided*, *however*, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall deter-

mine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the New York Stock Exchange or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange, (ii) a banking moratorium shall have been declared either by federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7(b) and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to the J.P. Morgan Securities Inc. Attn: Henry K. Wilson (facsimile: (212) 622-8358) and confirmed to Henry K. Wilson, J.P. Morgan Securities Inc., at 277 Park Avenue, New York, New York, 10172, Attention: General Counsel; with a copy to Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005 (facsimile: (212) 269-5420), Attention: Daniel J. Zubkoff, Esq.; or, if sent to the Company, will be mailed, delivered or telefaxed to the Company, 300 Willow Brook Office Park, Fairport, New York, 14450 (facsimile: (585) 218-3603), Attention: General Counsel; with a copy to McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois 60606 (facsimile: (312) 984-7700), Attention: Bernard Kramer, Esq.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to the Agreement by facsimile shall be effective as manual delivery of an original executed counterpart of this Agreement.

16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

17. Independent Underwriter.

(a) The Company hereby confirms its engagement of the services of the Independent Underwriter as, and the Independent Underwriter hereby confirms its agreement with the Company to render services as, a "qualified independent underwriter" within the meaning of Rule 2720 in connection with the offering and sale of the Securities.

(b) The Independent Underwriter hereby consents to the references to it as set forth under the caption "Underwriting" in the Prospectus and in any amendment or supplement thereto made in accordance with Section 5 hereof.

18. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

"*Act*" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Basic Prospectus*" shall mean the prospectus referred to in Section 1(a) above contained in the Registration Statement at the Effective Date.

"*Business Day*" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"*Commission*" shall mean the Securities and Exchange Commission.

"*Effective Date*" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"*Execution Time*" shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

"*Final Prospectus*" shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the Execution Time, together with the Basic Prospectus.

"*Preliminary Final Prospectus*" shall mean any preliminary prospectus supplement to the Basic Prospectus which describes the Securities and the offering thereof and is used prior to filing of the Final Prospectus, together with the Basic Prospectus.

"*Registration Statement*" shall mean the registration statement referred to in Section 1(a) above, including exhibits and financial statements, as amended at the Execution Time (or, if not effective at the Execution Time, in the form in which it shall become effective) and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A.

"*Rule 415*," "*Rule 424*," "*Rule 430A*" and "*Rule 462*" refer to such rules under the Act.

"*Rule 430A Information*" shall mean information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A.

"*Rule 462(b) Registration Statement*" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement referred to in Section 1(a) hereof.

"United States Dollars" shall mean lawful money of the United States of America.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

CONSTELLATION BRANDS, INC.

By: /S/ THOMAS S. SUMMER

Name: Thomas S. Summer
Title: Executive Vice President and
Chief Financial Officer

The foregoing Agreement is hereby
confirmed and accepted as of the
date specified in Schedule I hereto.

J.P. MORGAN SECURITIES INC.

By: /s/ SONIA LEE

Name: Sonia Lee
Title: Vice President

For itself and the other several Underwriters,
if any, named in Schedule II to the foregoing
Agreement.

SUNTRUST CAPITAL MARKETS, INC.,
in its capacity as Independent Underwriter

By: /s/ DOUGLAS J. MCCARTNEY

Name: Douglas J. McCartney
Title: Managing Director

SCHEDULE I

Underwriting Agreement dated July 24, 2003

Registration Statement No. 333-63480

Representative(s): J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and UBS Securities LLC

Title, Purchase Price and Description of Securities:

Title: Depositary Shares, each representing 1/40 of a share of 5.75% Series A Mandatory Convertible Preferred Stock

Number of Underwritten Securities to be sold by the Company: 6,000,000

Number of Option Securities to be sold by the Company: 820,000

Price to Public per Share (include accrued dividends, if any): $25.00

Price to Public — total: $150,000,000

Underwriting Discount per Share: $0.75

Underwriting Discount — total:. $4,500,000

Proceeds to Company per Share: $24.25

Proceeds to Company — total: $145,500,000

Other provisions: N/A

Closing Date, Time and Location: July 30, 2003 at 9:00 a.m. at Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005

Type of Offering: Delayed

Date referred to in Section 5(f) after which the Company may offer or sell securities issued or guaranteed by the Company without the consent of the Representative(s): October 22, 2003

SCHEDULE II

Underwriters	Number of Underwritten Securities To Be Purchased
J.P. Morgan Securities Inc.	2,175,000
Citigroup Global Markets Inc.	2,175,000
UBS Securities LLC	1,650,000
Total	6,000,000

SCHEDULE III

George Bresler
Jeananne K. Hauswald
F. Paul Hetterich
James A. Locke III
Thomas C. McDermott
Paul L. Smith
Thomas S. Summer
Thomas J. Mullin
Alexander L. Berk
Stephen B. Millar
Richard Sands
Robert Sands
Marilyn Sands
W. Keith Wilson
CWC Partnership – I
CWC Partnership – II
Mac & Sally Sands Foundation Incorporated
Marvin Sands Master Trust
Trust for the benefit of the Grandchildren of Marvin and Marilyn Sands

ANNEX I

Form of Certificate of Designations

[Provided under separate cover]

ANNEX II

Form of Opinion of McDermott, Will & Emery

(i) The Company has been duly incorporated and is validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to execute, deliver and perform all of its respective obligations under the Underwriting Agreement, the Deposit Agreement, the Certificate of Designations and the transactions contemplated therein, the issuance, sale and delivery of the Securities, the issuance and delivery of the shares of Preferred Stock represented thereby and the issuance and delivery of the Common Stock Shares.

(ii) No consent, approval, authorization, order, registration or qualification of or with any governmental authority or agency or, to our knowledge, any court or similar body is required under the laws of the United States, the State of New York and the General Corporation Law of the State of Delaware for the execution, delivery or performance of the Underwriting Agreement, the Deposit Agreement and the Certificate of Designations by the Company and the transactions contemplated therein by the Company or any Subsidiary, as the case may be, the issuance, sale and delivery of the Securities, the issuance and delivery of the shares of Preferred Stock represented thereby and the issuance and delivery of the Common Stock Shares, except such as (i) have been obtained under the Act and (ii) may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities by the Underwriters (as to which no opinion is required).

(iii) The execution, delivery and performance of the Underwriting Agreement, the Deposit Agreement and the Certificate of Designations by the Company, the consummation of the transactions contemplated therein, the issuance, sale and delivery of the Securities, the issuance and delivery of the shares of Preferred Stock represented thereby, the issuance and delivery of the Common Stock Shares and the application of the net proceeds from the sale of the Securities in the manner described in the Final Prospectus under the caption “Use of Proceeds” do not and will not (A) conflict with the charter (as amended by the Certificate of Designations) and bylaws of the Company, (B) conflict with, constitute a breach of or a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any lien, security interest or encumbrance upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms of any agreement, stock option plan, stock incentive plan, stock ownership plan, management incentive plan or instrument listed on Exhibit I hereto, (C) contravene the General Corporation Law of the State of Delaware or any statute, rule or regulation under the laws of the United States and the State of New York applicable to the Company or any of its properties or (D) to the knowledge of such counsel, conflict with or violate any judgment, decree or order of any court or governmental agency or court or body applicable to the Company or any of its properties.

(iv) The Underwriting Agreement, the Deposit Agreement, the Certificate of Designations and the transactions contemplated therein have been duly authorized by the Company. The Underwriting Agreement, the Deposit Agreement, the Certificate of Designations and any documents relating to the transactions contemplated therein have been duly executed and delivered by the Company, as applicable. The Securities have been duly delivered to the Underwriters by the Company.

(v) The execution of the Certificate of Designations by the Company and the filing of the Certificate of Designations with the Secretary of State of the State of Delaware (the "*Secretary of State*") on behalf of the Company have been duly authorized by the Board of Directors of the Company. The Certificate of Designations has been duly filed with the Secretary of State and shall have become effective under the General Corporation Law of the State of Delaware.

(vi) The Securities and the shares of Preferred Stock represented thereby conform in all material respects to the descriptions thereof under the captions "Description of Depositary Shares" and "Description of Series A Mandatory Convertible Preferred Stock," respectively, in the Final Prospectus. The statements made in the Final Prospectus under the caption "Certain United States Tax Consequences," insofar as they describe certain matters of law, are accurate in all material respects.

(vii) Neither the Company nor any Subsidiary is required to register under the Investment Company Act of 1940, as amended (the "1940 Act"), as an "investment company" as such term is defined in the 1940 Act.

(viii) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; the Securities are authorized for trading on the New York Stock Exchange; the Common Stock Shares issuable upon conversion of the Securities are approved for listing on the New York Stock Exchange, subject only to notice of issuance; the certificates for the Securities and the shares of Preferred Stock represented thereby are in valid and sufficient form; and the holders of outstanding shares of capital stock of the Company are not entitled to statutory preemptive or, to the knowledge of such counsel, contractual preemptive or other similar rights to subscribe for the Securities or the shares of Preferred Stock represented thereby.

(ix) The Securities have been duly and validly authorized and, when issued and delivered to and paid for by the Underwriters pursuant to the Underwriting Agreement, will be fully paid and non-assessable and will conform to the description thereof in the Final Prospectus; the shares of Preferred Stock represented by the Securities, and the deposit of such Preferred Stock by the Company in accordance with the Deposit Agreement, have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Deposit Agreement, such shares of Preferred Stock will be validly issued, fully paid and non-assessable; assuming due authorization, execution and delivery of the Deposit Agreement by

the Depositary, each Depositary Share will represent the interest described in the Prospectus in a validly issued, outstanding, fully paid and non-assessable share of Preferred Stock; assuming due execution and delivery of the Depositary Receipts, if any, by the Depositary pursuant to such Deposit Agreement, the Depositary Receipts will entitle the holders thereof to the benefits provided therein and in the Deposit Agreement; the Common Stock Shares have been duly authorized and validly reserved for issuance upon conversion of the Preferred Stock and are free of statutory preemptive and, to the knowledge of such counsel, contractual preemptive or other similar rights and are sufficient in number to meet current conversion requirements; the Common Stock Shares, when so issued upon such conversion in accordance with the terms of the Certificate of Designations, will be validly issued and fully paid and non-assessable.

(x) To the knowledge of such counsel, no holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(xi) The Registration Statement has become effective under the Act; any required filing of the Basic Prospectus, any Preliminary Final Prospectus and the Final Prospectus, and any supplements thereto, pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened and the Registration Statement and the Final Prospectus (other than the financial statements and other financial information contained therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder.

Such opinion shall also contain a statement that such counsel has participated in conferences with officers and representatives of the Company and the Subsidiaries, and representatives of the independent accountants of the Company and the Underwriters at which the contents of the Registration Statement and the Final Prospectus and related matters were discussed and that although such counsel need not pass upon or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Final Prospectus, and need not make any independent check or verification thereof, except as set forth in paragraph (v) of this form of opinion, based upon the foregoing, no facts came to such counsel's attention to lead such counsel to believe that the Registration Statement, as of the Effective Date or the date the Registration Statement was last deemed amended, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading or that the Final Prospectus (including the documents incorporated therein by reference (except to the extent statements contained in such documents have been modified or superseded by statements contained in the Final Prospectus)), as of its date and as of the Closing Date, contained an untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading. Such counsel need not express an opinion or belief as to the financial statements, the notes thereto, sched-

ules and other financial data included therein, or incorporated by reference into, or excluded from the Final Prospectus.

In rendering such opinions, such counsel may rely as to matters of fact, to the extent such counsel deems proper, on certificates or statements of responsible officers of the Company and certificates or other written statements of officials of jurisdictions having custody of documents respecting corporate existence or good standing.

EXHIBIT I TO ANNEX II

1. Importer Agreement by and between Barton Beers, Ltd. and Extrade, S.A. de C.V. dated as of November 22, 1996.
2. Barton Incorporated Management Incentive Plan.
3. Barton Brands, Ltd. Deferred Compensation Plan.
4. Marvin Sands Split Dollar Insurance Agreement.
5. Long-Term Stock Incentive Plan, which amends and restates the Canandaigua Wine Company, Inc. Stock Option and Stock Appreciation Right Plan, as amended by Amendment Number One to the Long-Term Stock Incentive Plan of the Company, as further amended by Amendment Number Two to the Long-Term Stock Incentive Plan of the Company, as further amended by Amendment Number Three to the Long-Term Stock Incentive Plan, as further amended by Amendment Number Four to the Long-Term Stock Incentive Plan.
6. Incentive Stock Option Plan of the Company, as amended by Amendment Number One to the Incentive Stock Option Plan of the Company, as further amended by Amendment Number Two to the Incentive Stock Option Plan of the Company, as further amended by Amendment Number Three to the Incentive Stock Option Plan of the Company.
7. Annual Management Incentive Plan of the Company, as amended by Amendment Number One to the Annual Management Incentive Plan of the Company.
8. Implementation Deed, dated as of January 17, 2003, between Hardy Wine Company Limited (f/k/a BRL Hardy Limited) and Constellation Brands, Inc.

Form of Opinion of Nixon Peabody LLP

(i) The Company is duly qualified and in good standing as a foreign corporation in each jurisdiction listed for it on Exhibit I attached hereto. The Company has all requisite corporate power to own, lease and license its respective properties and conduct its business as now being conducted and as described in the Final Prospectus.

(ii) To the best knowledge of such counsel after due inquiry, except as described or referred to in the Final Prospectus: there is not pending or threatened any action, suit, proceeding, inquiry or investigation, to which the Company is a party, or to which the property of the Company is subject, before or brought by any court or governmental agency or body, which, if determined adversely to the Company, will individually or in the aggregate result in any material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Subsidiaries taken as a whole or will materially adversely affect the consummation of the transactions contemplated by the Final Prospectus; and all pending legal or governmental proceedings to which the Company is a party or that affect any of their respective properties, that are not described in the Final Prospectus, including ordinary routine litigation incidental to the business, considered in the aggregate, will not result in a material adverse change in the business, financial position, net worth, results of operations or prospects, or materially adversely affect the properties or assets, of the Company and the Subsidiaries taken as a whole.

(iii) The outstanding shares of capital stock of the Company (other than the Securities) have been duly and validly authorized and issued and are fully paid and non-assessable; and, except as set forth in the Final Prospectus, the Incorporated Documents or the Constellation Brands UK Sharesave Scheme, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding.

(iv) The execution, delivery and performance of the Underwriting Agreement and the transactions contemplated therein by the Company and the application of the net proceeds from the sale of the Securities in the manner described in the Final Prospectus under the caption “Use of Proceeds” do not and will not conflict with, constitute a breach of or a default by the Company or any Subsidiary, as the case may be, under, or result in the creation or imposition of any lien, security interest or encumbrance upon any of the assets of the Company or any Subsidiary, as the case may be, pursuant to the terms the Credit Agreement or any other indenture, mortgage, deed of trust, loan or credit agreement, bond, debenture, note, lease or other agreement or instrument listed on Exhibit II hereto.

(v) Each of the documents filed by the Company under the Exchange Act and incorporated by reference into the Final Prospectus (collectively, the "*Documents*"), at the time it was filed with the Commission, appeared on its face to be appropriately responsive in all material respects to the requirements of the Exchange Act, and the rules and regulations as promulgated by the Commission under the Exchange Act, except that such counsel need not express any opinion as to the financial statements, schedules, and other financial data included therein or incorporated by reference therein, or excluded therefrom or the exhibits thereto (except to the extent set forth in the next sentence of this paragraph) and such counsel need not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Documents. To such counsel's knowledge without having made any independent investigation and based upon representations of officers of the Company as to factual matters, there were no contracts or documents required to be filed as exhibits to such Documents on the date they were filed which were not so filed.

EXHIBIT I TO ANNEX III

Company	Foreign Qualifications
Constellation Brands, Inc.	New York Florida Georgia Michigan Oklahoma New Hampshire North Carolina New Jersey

EXHIBIT II TO ANNEX III

1. Indenture dated as of February 25, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank as trustee, as amended by (i) Supplemental Indenture No. 1 dated as of February 25, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank as trustee, (ii) Supplemental Indenture No. 2 dated as of August 4, 1999 among the Company, the Guarantors named therein and Harris Trust and Savings Bank, as trustee, (iii) Supplemental Indenture No. 3 dated as of August 6, 1999 among the Company, the New Guarantors named therein and Harris Trust and Savings Bank, as trustee, (iv) Supplemental Indenture No. 4, dated as of May 15, 2000 among the Company, as Issuer, its principal operating subsidiaries, as Guarantors and Harris Trust and Savings Bank, as trustee, as further amended by Supplemental Indenture No. 5, dated as of September 14, 2000 by and among the Company, as Issuer, its principal operating subsidiaries as Guarantors and The Bank of New York, as trustee, (v) Supplemental Indenture No. 6, dated as of August 21, 2001, among the Company, Ravenswood Winery, Inc. and BNY Midwest Trust Company (successor trustee to Harris Trust and Savings Bank and the Bank of New York, as applicable), as trustee, (vi) Supplemental Indenture No. 7, dated as of January 23, 2002, by and among the Company, as Issuer, certain principal subsidiaries, as Guarantors, and BNY Midwest Trust Company, as trustee, and (vii) Supplemental Indenture No. 8, dated as of March 27, 2003, by and among the Company, CBI Australia Pty Limited and BNY Midwest Trust Company, as trustee.

2. Indenture dated as of November 17, 1999 among the Company, as Issuer, certain principal subsidiaries, as Guarantors and Harris Trust and Savings Bank, as trustee, as amended by (i) Supplemental Indenture No. 1, dated as of August 21, 2001, among the Company, Ravenswood Winery, Inc. and BNY Midwest Trust Company, as trustee, (ii) Supplemental Indenture No. 2, dated as of March 27, 2003 among the Company, CBI Australia Holdings Pty Limited, and BNY Midwest Trust Company, as trustee.

3. Amended and Restated Credit Agreement, dated as of March 19, 2003, between the Company, the guarantors named therein, the lenders signatory thereto, JPMorgan Chase Bank, as Administrative Agent, and J.P. Morgan Europe Limited, as London Agent.

4. Amended and Restated Bridge Loan Agreement, dated as of January 16, 2003, amended and restated as of March 26, 2003, between the Company, the guarantors party thereto, the lenders party thereto and JPMorgan Chase Bank, as Administrative Agent.

EXHIBIT A

Constellation Brands, Inc.
Public Offering of
Series A Mandatory Convertible Preferred Stock
and Class A Common Stock

July 24, 2003

J.P. MORGAN SECURITIES INC.
CITIGROUP GLOBAL MARKETS INC.
UBS SECURITIES LLC
SUNTRUST CAPITAL MARKETS, INC.

Ladies and Gentlemen:

This letter is being delivered to you (the "*Representatives*") in connection with (i) the proposed Underwriting Agreement (the "*Common Stock Underwriting Agreement*"), between Constellation Brands, Inc., a Delaware corporation (the "*Company*"), and each of you as representatives of a group of underwriters named therein (the "*Common Stock Underwriters*"), relating to an underwritten public offering of Class A Common Stock, $.01 par value (the "*Common Stock*"), of the Company and (ii) the proposed Underwriting Agreement (the "*Depositary Share Underwriting Agreement*"), between the Company and each of you as representatives of a group of underwriters named therein (the "*Depositary Share Underwriters*" and, together with the Common Stock Underwriters, the "*Underwriters*"), relating to an underwritten public offering of Depositary Shares, each representing 1/40 of a share of Series A Mandatory Convertible Preferred Stock, $.01 par value (the "*Preferred Stock*"), of the Company (the Common Stock Underwriting Agreement together with the Preferred Stock Underwriting Agreement, the "*Underwriting Agreements*").

In order to induce you and the other Underwriters to enter into the Underwriting Agreements, the undersigned will not, without the prior written consent of each of Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and

regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Underwriting Agreements, other than (i) shares of Common Stock disposed of as bona fide gifts; *provided*, *however*, that the recipient of such Common Stock agrees in writing to be bound by the terms hereof[1] and (ii) in connection with the exercise of stock options, a number of shares of Common Stock having a value not to exceed the aggregate of the exercise price and any tax withholding due with respect to the options exercised.

If for any reason either of the Underwriting Agreements shall be terminated prior to the Closing Date (as defined in the applicable Underwriting Agreement), the agreement set forth above shall likewise be terminated, but shall remain in full force and effect with respect to any Underwriting Agreement that has not been terminated.

Yours very truly,

____

Name:
Address:

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[1] Each of the first fourteen individuals named on Schedule III to the Underwriting Agreements may make bona fide gifts of up to a maximum aggregate of 7,500 shares of Common Stock within a period of 90 days after the date of the Underwriting Agreements to recipients of such Common Stock who do not agree in writing to be bound by the terms hereof.

EXHIBIT B

July 24, 2003

Constellation Brands, Inc. 300 WillowBrook Office Park Fairport, New York 14450
J.P. Morgan Securities Inc. Citigroup Global Markets Inc. UBS Securities LLC c/o J.P. Morgan Securities Inc. 277 Park Avenue New York, New York 10172

Re: 6,000,000 Depositary Shares
Each Representing 1/40 of a Share of
5.75% Series A Mandatory Convertible Preferred Stock

Ladies and Gentlemen:

In connection with the above-referenced offering (the "*Offering*"), SunTrust Capital Markets, Inc., through its SunTrust Robinson Humphrey Capital Markets Division, is acting a "qualified independent underwriter" (as required by Rule 2710(c)(8) of the rules of the National Association of Securities Dealers, Inc. ("*NASD*")) and as such has the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 thereof.

We are a member of the NASD and are qualified to act as "qualified independent underwriter," as such term is defined in Rule 2720(b)(15) of the NASD rules, in connection with the Offering. We have participated in the preparation of the Registration Statement on Form S-3 (No. 333-63480) and the Prospectus Supplement dated the date hereof relating to the Offering and have exercised the usual standards of "due diligence" in respect thereto. In this regard, and assuming that the Offering is made on the date hereof, we recommend that (i) the price of the Series A Mandatory Convertible Preferred Stock be no higher than $___.__ per share and (ii) the yield on the Series A Mandatory Convertible Preferred Stock be no lower than ____%, which price and yield should in no way be considered or relied upon as an indication of the actual value of the Series A Mandatory Convertible Preferred Stock.

Our recommendation herein is based on economic, market, financial and other conditions as they exist at the date hereof and can be evaluated by us and on the condition and circumstances of the Company as described in the Registration Statement. Changes in the condition and circumstances of the Company from those described in the Registration State-

ment and events occurring after the date hereof, including changes in the markets in which the Company intends to operate, could materially affect the conclusions stated in this letter. We shall not be obligated or required hereafter to reaffirm or revise our recommendation or otherwise to comment on any events occurring after the date hereof or on any changes in the condition or circumstances of the Company from those so described.

Very truly yours,

SUNTRUST CAPITAL MARKETS, INC.

By: ______________________________

Exhibit 4.1

CERTIFICATE OF DESIGNATIONS OF
5.75% SERIES A MANDATORY CONVERTIBLE PREFERRED STOCK
OF CONSTELLATION BRANDS, INC.

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Constellation Brands, Inc., a Delaware corporation (the "*Company*"), certifies that, pursuant to the authority contained in Article 5 of its Restated Certificate of Incorporation, as amended (the "*Restated Certificate of Incorporation*"), and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware (the "*DGCL*"), a duly authorized committee of the Board of Directors of the Company (the "*Board of Directors*") by resolution adopted by unanimous written consent, pursuant to Section 141(f) of the DGCL, on July 24, 2003, duly approved and adopted the following resolution, which resolution remains in full force and effect on the date hereof:

RESOLVED, that pursuant to the authority vested in the Board of Directors and by the Restated Certificate of Incorporation, a duly authorized committee of the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of the Company's preferred stock having a par value of $.01 per share, with a liquidation preference of $1,000 per share, subject to adjustment as provided herein, which shall be designated as 5.75% Series A Mandatory Convertible Preferred Stock, consisting of 170,500 shares, no shares of which have heretofore been issued by the Company, having the following powers, designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof:

Section 1. *Designation; Number of Shares; Ranking*. There is hereby created from the authorized and unissued shares of Preferred Stock, par value $.01 per share, of the Company, a series of convertible Preferred Stock designated as the Company's "5.75% Series A Mandatory Convertible Preferred Stock" (the "*Series A Convertible Preferred Stock*") The number of shares of Series A Mandatory Convertible Preferred Stock shall be 170,500. The Series A Mandatory Convertible Preferred Stock shall rank, with respect to dividend distributions and distributions upon the liquidation, dissolution or winding-up of the Company, (i) senior to the Class A Common Stock, par value $.01 per share, of the Company (the "*Class A Common Stock*"), the Class B Common Stock, par value $.01 per share, of the Company (the "*Class B Common Stock*" and, together with the Class A Common Stock, the "*Common Stock*") and to each other class or series of stock of the Company (including any series of preferred stock established after July 30, 2003 by the Board of Directors or a duly authorized committee thereof) the terms of which do not expressly provide that such class or series will rank senior to or *pari passu* with the Series A Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon the liquidation, dissolution or winding-up of the Company (collectively referred to as "*Junior Securities*"); (ii) *pari passu* with each class or series of stock of the Company the terms of which expressly provide that such class or series will rank *pari passu* with the Series A Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon liquidation, dissolu-

tion or winding-up of the Company (collectively referred to as "*Parity Securities*"); and (iii) junior to each class or series of stock of the Company, the terms of which expressly provide that such class or series will rank senior to the Series A Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon liquidation, dissolution or winding-up of the Company (collectively referred to as "*Senior Securities*").

Section 2. *Dividends*.

(i) *General*. Dividends on the Series A Mandatory Convertible Preferred Stock shall be payable quarterly, when, as and if declared by the Board of Directors or a duly authorized committee thereof, out of the assets of the Company legally available therefor, on the first calendar day (or the first following Business Day if the first calendar day is not a Business Day) of March, June, September and December of each year (each such date being referred to herein as a "*Dividend Payment Date*") at the annual rate of $57.5000 per share subject to adjustment as provided in Section 12(ii). The initial dividend on the Series A Mandatory Convertible Preferred Stock for the dividend period commencing on July 30, 2003, to but excluding December 1, 2003, shall be $19.3264 per share, and shall be payable, when, as and if declared, on December 1, 2003. The dividend on the Series A Mandatory Convertible Preferred Stock for each subsequent dividend period shall be $14.3750 per share. The amount of dividends payable for any other period that is shorter or longer than a full quarterly dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months.

A dividend period with respect to a Dividend Payment Date is the period commencing on the preceding Dividend Payment Date or, if none, the date of issue and ending on the day immediately prior to the next Dividend Payment Date. Dividends payable, when, as and if declared, on a Dividend Payment Date shall be payable to Holders of record as they appear on the stock books of the Company on the later of (i) the close of business on the 15th calendar day (or the first following Business Day if such 15th calendar day is not a Business Day) of the calendar month preceding the month in which the applicable Dividend Payment Date falls and (ii) the close of business on the day on which the Board of Directors or a duly authorized committee thereof declares the dividend payable (each, a "*Dividend Record Date*").

Dividends on the Series A Mandatory Convertible Preferred Stock shall be cumulative if the Company fails to declare one or more dividends on the Series A Mandatory Convertible Preferred Stock in any amount, whether or not there are assets of the Company legally available for the payment of such dividends in whole or in part.

The Company may pay dividends, at its sole option, (a) in cash, (b) by delivering shares of Class A Common Stock to the Transfer Agent on behalf of the Holders, to be sold on the Holders' behalf for cash or (c) in any combination thereof. By and upon acquiring the Series A Mandatory Convertible Preferred Stock, each Holder is deemed to appoint the Transfer Agent as such Holder's agent for any such sale, and the Transfer Agent shall serve as a designated agent of the Holders in making any such sales. To pay dividends in shares of Class A Common Stock, the Company must deliver to the Transfer Agent, not *less* than five Business Days prior to the applicable Dividend Payment Date, a number of shares of Class A Common Stock which, when sold by the Transfer Agent on the Holders' behalf, will result in net cash proceeds to be distributed to the Holders in an amount equal to the cash dividend otherwise payable to the

Holders. The Transfer Agent will sell such shares of Class A Common Stock on the Holders' behalf and make payment of the cash proceeds from the sale of such Class A Common Stock on or prior to the applicable Dividend Payment Date or such other date as is fixed by the Board of Directors or a duly authorized committee thereof pursuant to the terms and conditions set forth in the last paragraph of this Section 2(i).

If the Company pays dividends in shares of Class A Common Stock by delivering them to the Transfer Agent, those shares shall be owned beneficially by the Holders upon delivery to the Transfer Agent, and the Transfer Agent shall hold those shares and the net cash proceeds from the sale of those shares for the exclusive benefit of the Holders until the Dividend Payment Date, or such other date as is fixed by the Board of Directors or a duly authorized committee thereof pursuant to the terms and conditions set forth in the last paragraph of this Section 2(i), at which time the portion of such net cash proceeds equal to the non-cash component of the declared dividend on the Series A Mandatory Convertible Preferred Stock shall be distributed to the Holders entitled thereto with any remainder distributed to the Company.

Holders shall not be entitled to any dividend, whether payable in cash, property or stock, in excess of the then applicable full dividends calculated pursuant to this Section 2(i) (including accrued dividends, if any) on shares of Series A Mandatory Convertible Preferred Stock. No interest or sum of money in lieu of interest shall be payable in respect of any dividend or payment which may be in arrears.

Dividends in arrears on the Series A Mandatory Convertible Preferred Stock not declared for payment or paid on any Dividend Payment Date may be declared by the Board of Directors or a duly authorized committee thereof and paid on any date fixed by the Board of Directors or a duly authorized committee thereof, whether or not a Dividend Payment Date, to the Holders of record as they appear on the stock register of the Company on a record date selected by the Board of Directors or a duly authorized committee thereof, which shall (i) not precede the date the Board of Directors or a duly authorized committee thereof declares the dividend payable and (ii) not be more than 60 days prior to such fixed dividend payment date.

(ii) In order to pay dividends on any Dividend Payment Date, or such other date as is fixed by the Board of Directors or a duly authorized committee thereof pursuant to the terms and conditions set forth in the last paragraph of Section 2(i) hereof, in shares of Class A Common Stock, (a) the shares of Class A Common Stock delivered to the Transfer Agent shall have been duly authorized, (b) the Company shall have provided to the Transfer Agent a prospectus and evidence of an effective registration statement under the Securities Act of 1933, as amended, and the rules and regulations thereunder (the "*Securities Act*") permitting the immediate sale of the shares of Class A Common Stock in the public market, (c) the shares of Class A Common Stock, once purchased by the purchasers thereof, shall be validly issued, fully paid and non-assessable and (d) such shares shall have been registered under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, if required, and shall be listed or admitted for trading on each United States securities exchange on which the Class A Common Stock is then listed.

(iii) *Payment Restrictions.* The Company may not (x) declare or pay any dividend or make any distribution of assets (other than dividends paid or other distributions made in

Junior Securities) on, whether in cash, property or otherwise, or (y) redeem, purchase or otherwise acquire (except upon conversion or exchange for Junior Securities), pay or make available any monies for a sinking fund for, Junior Securities, unless, in each case, all accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock for all prior dividend periods have been or contemporaneously are declared and paid and the full quarterly dividend on the Series A Mandatory Convertible Preferred Stock for the current dividend period has been or contemporaneously is declared and paid or declared and set apart for payment.

Unless all accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock for all prior dividend periods have been or contemporaneously are declared and paid and the full quarterly dividend on the Series A Mandatory Convertible Preferred Stock for the current dividend period has been or contemporaneously is declared and paid or declared and set apart for payment, the Company may not redeem, purchase or otherwise acquire (except upon conversion or exchange for Parity Securities or Junior Securities) Parity Securities.

Section 3. *Liquidation Preference*. In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company, the Holders shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any distribution of assets is made on the Common Stock of the Company or any other class or series of stock of the Company ranking junior to the Series A Mandatory Convertible Preferred Stock as to the distribution of assets upon the liquidation, dissolution or winding-up of the Company, $1,000.00 per share, subject to adjustment as provided in Section 12(ii) hereof (the "*Liquidation Preference*"), *plus* an amount equal to the sum of all accrued and unpaid dividends (whether or not declared) for the then-current dividend period and all dividend periods prior thereto.

Neither the sale of all or substantially all of the property or business of the Company (other than in connection with the voluntary or involuntary liquidation, dissolution or winding-up of the Company), nor the merger, conversion or consolidation of the Company into or with any other Person, nor the merger, conversion or consolidation of any other Person into or with the Company shall constitute a voluntary or involuntary liquidation, dissolution or winding-up of the Company for the purposes of the foregoing paragraph. After the payment to the Holders of the full preferential amounts provided for above, the Holders as such shall have no right or claim to any of the remaining assets of the Company.

In the event the assets of the Company available for distribution to the Holders upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company shall be insufficient to pay in full all amounts to which such Holders are entitled as provided above, no such distribution shall be made on account of any other stock of the Company ranking *pari passu* with the Series A Mandatory Convertible Preferred Stock as to the distribution of assets upon such liquidation, dissolution or winding-up, unless a *pro rata* distribution is made on the Series A Mandatory Convertible Preferred Stock and such other Capital Stock of the Company, with the amount allocable to each series of such stock determined on the basis of the aggregate liquidation preference of the outstanding shares of each series and distributions to the shares of each series being made on a *pro rata* basis.

Section 4. *Voting Rights*.

(i) The Holders shall have no voting rights, except as set forth below or as expressly required by applicable state law. In exercising any such vote, each outstanding share of Series A Mandatory Convertible Preferred Stock shall be entitled to one vote.

(ii) So long as any shares of Series A Mandatory Convertible Preferred Stock are outstanding, in addition to any other vote of stockholders of the Company required under applicable law or the Restated Certificate of Incorporation, the affirmative vote or consent of the Holders of at least 66 $^{2}/_{3}$% of the outstanding shares of the Series A Mandatory Convertible Preferred Stock will be required for the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any provision of the Restated Certificate of Incorporation or of this Certificate of Designations which would materially and adversely affect any right, preference, privilege or voting power of the Series A Mandatory Convertible Preferred Stock or of the Holders.

(iii) So long as any shares of Series A Mandatory Convertible Preferred Stock are outstanding, in addition to any other vote of stockholders of the Company required under applicable law or the Restated Certificate of Incorporation, the affirmative vote or consent of the Holders of at least 66 $^{2}/_{3}$% of the outstanding shares of the Series A Mandatory Convertible Preferred Stock and all shares of any other series of our preferred stock which expressly provide that such class or series will rank *pari passu* with the Series A Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon liquidation, dissolution or winding-up of the Company, voting together as a single class, will be required to (a) issue, authorize or increase the authorized amount of, or issue or authorize any obligation or security convertible into or evidencing a right to purchase, by merger, consolidation or otherwise, any class or series of stock ranking senior to the Series A Mandatory Convertible Preferred Stock as to dividend distributions or distributions upon the liquidation, dissolution or winding-up of the Company or (b) reclassify, by merger, consolidation or otherwise, any authorized stock of the Company into any class or series of stock, or any obligation or security convertible into or evidencing a right to purchase any class or series of stock, ranking senior to the Series A Mandatory Convertible Preferred Stock as to dividend distributions or distributions upon the liquidation, dissolution or winding-up of the Company; *provided, however,* that no such vote shall be required for the Company to issue, authorize or increase the authorized amount of, or issue or authorize any obligation or security convertible into or evidencing a right to purchase, any class or series of stock ranking *pari passu* with or junior to the Series A Mandatory Convertible Preferred Stock as to dividend distributions or distributions upon the liquidation, dissolution or winding-up of the Company.

Section 5. *Automatic Conversion.* Each share of Series A Mandatory Convertible Preferred Stock will automatically convert (unless previously converted at the option of the Company in accordance with Section 6 or at the option of the Holder in accordance with Section 7, or a Merger Early Conversion has occurred in accordance with Section 8), on September 1, 2006 (the "*Automatic Conversion Date*"), into a number of newly issued shares of Class A Common Stock equal to the Automatic Conversion Rate (as defined below). The Holders on the Automatic Conversion Date shall have the right to receive a dividend payment of cash, shares of

Class A Common Stock, or any combination thereof, as the Company determines in its sole discretion, in an amount equal to any accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock as of the Automatic Conversion Date (other than previously declared dividends on the Series A Mandatory Convertible Preferred Stock payable to a Holder of record as of a prior date), whether or not declared, out of legally available assets of the Company. To the extent the Company pays some or all of such dividend in shares of Class A Common Stock, the number of shares of Class A Common Stock issuable to a Holder in respect of such accrued and unpaid dividends shall equal the amount of accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock on the Automatic Conversion Date that the Company determines to pay in shares of Class A Common Stock divided by the Current Market Price (as defined below) of the Class A Common Stock on the Automatic Conversion Date.

Dividends on the shares of Series A Mandatory Convertible Preferred Stock shall cease to accrue and such shares of Series A Mandatory Convertible Preferred Stock shall cease to be outstanding on the Automatic Conversion Date. The Company shall make such arrangements as it deems appropriate for the issuance of certificates, if any, representing shares of Class A Common Stock (both for purposes of the automatic conversion of shares of Series A Mandatory Convertible Preferred Stock and for purposes of any dividend payment by the Company of shares of Class A Common Stock in respect of accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock), and for any payment of cash in respect of accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock or cash in lieu of fractional shares, if any, in exchange for and contingent upon the surrender of certificates representing the shares of Series A Mandatory Convertible Preferred Stock (if such shares are held in certificated form), and the Company may defer the payment of dividends on such shares of Class A Common Stock and the voting thereof until, and make such payment and voting contingent upon, the surrender of such certificates representing the shares of Series A Mandatory Convertible Preferred Stock; *provided, however,* that the Company shall give the Holders such notice of any such actions as the Company deems appropriate and upon such surrender such Holders shall be entitled to receive such dividends declared and paid on such shares of Class A Common Stock subsequent to the Automatic Conversion Date. Amounts payable in cash in respect of the shares of Series A Mandatory Convertible Preferred Stock or in respect of such shares of Class A Common Stock shall not bear interest.

Section 6. *Provisional Conversion at the Option of the Company.*

(i) Prior to the Automatic Conversion Date, if the Closing Price of the Class A Common Stock has exceeded 150% of the Threshold Appreciation Price (as defined below) for at least 20 Trading Days (as defined below) within a period of 30 consecutive Trading Days the Company may, at its option, cause the conversion of all, but not *less* than all, the shares of Series A Mandatory Convertible Preferred Stock then outstanding into shares of Class A Common Stock at a rate of 29.2760 shares of Class A Common Stock for each share of Series A Mandatory Convertible Preferred Stock (the "*Provisional Conversion Rate*"), subject to adjustment as set forth in Section 9(ii) below (as though references in Section 9(ii) to the Automatic Conversion Rate were replaced with references to the Provisional Conversion Rate); *provided,* that the Company notifies the Holders (pursuant to paragraph (ii) below) that it is exercising its option to cause the conversion of the Series A Mandatory Convertible Preferred Stock pursuant

to this Section 6 (the “*Provisional Conversion Notice Date*”) prior to the end of such thirty (30) day period. The Company shall be able to cause this conversion only if, in addition to issuing the Holders shares of Class A Common Stock, the Company pays the Holders (a) in cash, (b) by delivering shares of Class A Common Stock to the Transfer Agent on behalf of the Holders, to be sold on the Holders’ behalf for cash (in accordance with the procedures set forth in Section 2(i)) or (c) in any combination thereof, (x) an amount equal to any accrued and unpaid dividends on the shares of Series A Mandatory Convertible Preferred Stock then outstanding, whether or not declared, and (y) the present value of all remaining dividend payments on the shares of Series A Mandatory Convertible Preferred Stock then outstanding, through and including September 1, 2006, in each case, out of legally available assets of the Company. The present value of the remaining dividend payments will be computed using a discount rate equal to the Treasury Yield.

(ii) A written notice (the “*Provisional Conversion Notice*”) shall be sent by or on behalf of the Company, by first class mail, postage prepaid, to the Holders of record as they appear on the stock register of the Company on the Provisional Conversion Notice Date (a) notifying such Holders of the election of the Company to convert and of the Provisional Conversion Date (as defined below), which date shall not be *less* than 30 days nor be more than 60 days after the Provisional Conversion Notice Date, and (b) stating the Corporate Trust Office of the Transfer Agent at which the shares of Series A Mandatory Convertible Preferred Stock called for conversion shall, upon presentation and surrender of the certificate(s) (if such shares are held in certificated form) evidencing such shares, be converted, and the Provisional Conversion Rate to be applied thereto.

(iii) The Company shall deliver to the Transfer Agent irrevocable written instructions authorizing the Transfer Agent, on behalf and at the expense of the Company, to cause the Provisional Conversion Notice to be duly mailed as soon as practicable after receipt of such irrevocable instructions from the Company and in accordance with the above provisions. The shares of Class A Common Stock to be issued upon conversion of the Series A Mandatory Convertible Preferred Stock pursuant to this Section 6 and all funds necessary for the payment (a) in cash, (b) by delivering shares of Class A Common Stock to the Transfer Agent on behalf of the Holders, to be sold on the Holders’ behalf for cash (in accordance with the procedures set forth in Section 2(i)) or (c) in any combination thereof, of (x) any accrued and unpaid dividends on the shares of Series A Mandatory Convertible Preferred Stock then outstanding, whether or not declared, and (y) the present value of all remaining dividend payments on the shares of Series A Mandatory Convertible Preferred Stock then outstanding through and including September 1, 2006, shall be deposited with the Transfer Agent in trust at least two Business Days prior to the Provisional Conversion Date, for the *pro rata* benefit of the Holders of record as they appear on the stock register of the Company, so as to be and continue to be available therefor. Neither failure to mail such Provisional Conversion Notice to one or more such Holders nor any defect in such Provisional Conversion Notice shall affect the sufficiency of the proceedings for conversion as to other Holders.

(iv) If a Provisional Conversion Notice shall have been given as hereinbefore provided, then each Holder shall be entitled to all preferences and relative, participating, optional and other special rights accorded by this Certificate of Designations until and including the Pro-

visional Conversion Date. From and after the Provisional Conversion Date, upon delivery by the Company of the Class A Common Stock and payment of the funds and/or delivery of the shares of Class A Common Stock, as the case may be, to the Transfer Agent as described in paragraph (iii) above, the Series A Mandatory Convertible Preferred Stock shall no longer be deemed to be outstanding, and all rights of such Holders shall cease and terminate, except the right of the Holders, upon surrender of certificates therefor, to receive Class A Common Stock and any amounts to be paid hereunder.

(v) The deposit of monies and/or shares of Class A Common Stock, as the case may be, in trust with the Transfer Agent shall be irrevocable except that the Company shall be entitled to receive from the Transfer Agent the interest or other earnings, if any, earned on any monies and/or shares of Class A Common Stock, as the case may be, so deposited in trust, and the Holders of the shares converted shall have no claim to such interest or other earnings, and any balance of monies so deposited by the Company and unclaimed by the Holders entitled thereto at the expiration of two years from the Provisional Conversion Date shall be repaid, together with any interest or other earnings thereon, to the Company, and after any such repayment, the Holders of the shares entitled to the funds so repaid to the Company shall look only to the Company for such payment without interest.

Section 7. *Early Conversion at the Option of the Holder.*

(i) Shares of Series A Mandatory Convertible Preferred Stock are convertible, in whole or in part, at the option of the Holders thereof ("*Optional Conversion*"), at any time prior to the Automatic Conversion Date, into shares of Class A Common Stock at a rate of 29.2760 shares of Class A Common Stock for each share of Series A Mandatory Convertible Preferred Stock (the "*Optional Conversion Rate*"), subject to adjustment as set forth in Section 9(ii) below (as though references in Section 9(ii) to the Automatic Conversion Rate were replaced with references to the Optional Conversion Rate).

(ii) Optional Conversion of shares of Series A Mandatory Convertible Preferred Stock may be effected by delivering certificates evidencing such shares (if such shares are held in certificated form), together with written notice of conversion and a proper assignment of such certificates to the Company or in blank (and, if applicable, payment of an amount equal to the dividend payable on such shares pursuant to paragraph (iii) below), to the Corporate Trust Office of the Transfer Agent for the Series A Mandatory Convertible Preferred Stock or to any other office or agency maintained by the Company for that purpose. Each Optional Conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the foregoing requirements shall have been satisfied.

(iii) Holders of shares of Series A Mandatory Convertible Preferred Stock at the close of business on a Dividend Record Date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date (if such dividend has been declared) notwithstanding the Optional Conversion of such shares following such Dividend Record Rate and prior to such Dividend Payment Date. However, shares of Series A Mandatory Convertible Preferred Stock surrendered for Optional Conversion after the close of business on a Dividend Record Date and before the opening of business on the corresponding Dividend Payment Date must be accompanied by payment in cash of an amount equal to the dividend payable

on such shares on such Dividend Payment Date. Except as provided above, upon any Optional Conversion of shares of Series A Mandatory Convertible Preferred Stock, the Company shall make no payment or allowance for unpaid preferred dividends, whether or not in arrears, on such shares of Series A Mandatory Convertible Preferred Stock as to which Optional Conversion has been effected or for dividends or distributions on the shares of Class A Common Stock issued upon such Optional Conversion.

Section 8. *Early Conversion upon Cash Merger*.

(i) In the event of a merger or consolidation of the Company of the type described in Section 9(iii)(a) in which all or any class of Common Stock outstanding immediately prior to such merger or consolidation is exchanged for consideration consisting of at least 30% cash or cash equivalents (any such event, a "*Cash Merger*"), then the Company (or the successor to the Company hereunder) shall be required to offer all Holders of shares of Series A Mandatory Convertible Preferred Stock that remain outstanding after the Cash Merger (if any) the right to convert their shares of Series A Mandatory Convertible Preferred Stock prior to the Automatic Conversion Date ("*Merger Early Conversion*") as provided herein.

On or before the fifth Business Day after the consummation of a Cash Merger, the Company or, at the request and expense of the Company, the Transfer Agent, shall give all Holders notice of the occurrence of the Cash Merger and of the right of Merger Early Conversion arising as a result thereof. The Company shall also deliver a copy of such notice to the Transfer Agent. Each such notice shall contain:

(a) the date, which shall be not *less* than 20 nor more than 30 calendar days after the date of such notice, on which the Merger Early Conversion will be effected (the "*Merger Early Conversion Date*");

(b) the date, which shall be on or one Business Day prior to the Merger Early Conversion Date, by which the Merger Early Conversion right must be exercised;

(c) the Automatic Conversion Rate in effect immediately before such Cash Merger and the kind and amount of securities, cash and other property receivable by the Holder upon conversion of its shares of Series A Mandatory Convertible Preferred Stock pursuant to Section 9(iii); and

(d) the instructions a Holder must follow to exercise the Merger Early Conversion right.

(ii) To exercise a Merger Early Conversion right, a Holder shall deliver to the Transfer Agent at the Corporate Trust Office (as defined below) by 5:00 p.m., New York City time, on or before the date by which the Merger Early Conversion right must be exercised as specified in the notice, the certificate(s) (if such shares are held in certificated form) evidencing the shares of Series A Mandatory Convertible Preferred Stock with respect to which the Merger Early Conversion right is being exercised duly endorsed for transfer to the Company or in blank with a written notice to the Company stating the Holder's intention to convert early in connection with the Cash Merger and providing the Company with payment instructions.

(iii) On the Merger Early Conversion Date, the Company shall deliver or cause to be delivered the cash, securities and other property to be received by such exercising Holder determined by assuming the Holder had converted the shares of Series A Mandatory Convertible Preferred Stock for which such Merger Early Conversion right was exercised into Class A Common Stock immediately before the Cash Merger at the Automatic Conversion Rate (as adjusted pursuant to Section 9(ii)).

(iv) Upon a Merger Early Conversion, the Transfer Agent shall, in accordance with the instructions provided by the Holder thereof on the notice provided to the Company as set forth in paragraph (ii) above, deliver to the Holder such cash, securities or other property issuable upon such Merger Early Conversion together with payment in lieu of any fractional shares, as provided herein.

(v) In the event that Merger Early Conversion is effected with respect to shares of Series A Mandatory Convertible Preferred Stock representing *less* than all the shares of Series A Mandatory Convertible Preferred Stock held by a Holder, upon such Merger Early Conversion the Company (or the successor to the Company hereunder) shall execute and the Transfer Agent shall authenticate, countersign and deliver to the Holder thereof, at the expense of the Company, a certificate evidencing the shares as to which Merger Early Conversion was not effected.

Section 9. *Definition of Automatic Conversion Rate; Anti-dilution Adjustments*.

(i) Subject to the immediately following sentence, the "*Automatic Conversion Rate*" is equal to:

(a) if the Applicable Market Value (as defined below) is greater than or equal to $34.16 (the "*Threshold Appreciation Price*"), 29.2760 shares of Class A Common Stock per share of Series A Mandatory Convertible Preferred Stock;

(b) if the Applicable Market Value is *less* than the Threshold Appreciation Price, but is greater than $28.00, the number of shares of Class A Common Stock per share of Series A Mandatory Convertible Preferred Stock equal to (1) $25.00 divided by the Applicable Market Value times (2) $40.00; and

(c) if the Applicable Market Value is equal to or less than $28.00, 35.7160 shares of Class A Common Stock per share of Series A Mandatory Convertible Preferred Stock,

in each case subject to adjustment as provided in Section 9(ii) (and in each case rounded upward or downward to the nearest 1/10,000th of a share). In each of the clauses in the immediately preceding sentence, the number of newly issued shares of Class A Common Stock issuable upon conversion of each share of the Series A Mandatory Convertible Preferred Stock on the Automatic Conversion Date in respect of a conversion pursuant to Section 5 shall be increased by an amount equal to any accrued and unpaid dividends on the Series A Mandatory Convertible Preferred Stock on the Automatic Conversion Date (taking into account any payment of such divi-

dends on the Automatic Conversion Date) divided by the Current Market Price of the Class A Common Stock on the Automatic Conversion Date.

(ii) In connection with the Automatic Conversion Rate as set forth in Section 9(i), the formula for determining the Automatic Conversion Rate and the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8 shall be subject to the following adjustments (in the case of an early conversion as set forth in Section 6, 7 or 8, as though references to the Automatic Conversion Rate were replaced with references to the number of shares of Class A Common Stock to be delivered on such early conversion):

(a) *Stock Dividends*. In case the Company shall pay or make a dividend or other distribution on any class of Common Stock in shares of Common Stock, the Automatic Conversion Rate, as 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 Automatic Conversion Rate by:

(1) in the case such class of Common Stock on which the dividend or other distribution is declared is Class A Common Stock, a fraction of which the numerator shall be the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, and the total number of shares constituting such dividend or other distribution;

(2) in the case such class of Common Stock on which the dividend or other distribution is declared is Class B Common Stock, a fraction of which the numerator shall be the sum of the number of shares of Class A Common Stock and the number of shares of Class B Common Stock, in each case outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of (x) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, (y) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination and (z) the total number of shares constituting such dividend or other distribution with respect to the Class B Common Stock; or

(3) in the case such class of Common Stock on which the dividend or other distribution is declared is both Class A Common Stock and Class B Common Stock, the greater of:

(i) the fraction described in clause (1) above; or

(ii) a fraction of which the numerator shall be the sum of the number of shares of Class A Common Stock and the number of shares of Class B Common Stock, in each case outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of (w) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed

for such determination, (x) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination, (y) the total number of shares constituting such dividend or other distribution with respect to the Class A Common Stock and (z) the total number of shares constituting such dividend or other distribution with respect to the Class B Common Stock;

in each of clauses (1), (2) and (3) with such increase to become effective immediately after the opening of business on the day following the date fixed for such determination

(b) *Stock Purchase Rights*. In case the Company shall issue to all holders of any class of Common Stock (such issuance not being available on an equivalent basis to Holders of the shares of Series A Mandatory Convertible Preferred Stock upon conversion) (1) rights, options or warrants entitling them to subscribe for or purchase shares of such class of Common Stock, or (2) securities convertible or exchangeable into shares of such class of Common Stock or rights, options or warrants to purchase or acquire securities convertible or exchangeable into shares of such class of Common Stock, in each case at a price per share of such class of Common Stock *less* than the Current Market Price of such class of Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, options, warrants or securities (other than pursuant to a dividend reinvestment, share purchase or similar plan), the Automatic 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 Automatic Conversion Rate by:

(1) in the case such class of Common Stock is Class A Common Stock, a fraction, the numerator of which shall be the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination *plus* the number of shares of Class A Common Stock which the aggregate consideration expected to be received by the Company upon the exercise, conversion or exchange of such rights, options, warrants or securities (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) would purchase at such Current Market Price of the Class A Common Stock and the denominator of which shall be the sum of (x) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination and (y) the number of shares of Class A Common Stock so offered for subscription or purchase, either directly or indirectly, or into which such securities are convertible or exchangeable;

(2) in the case such class of Common Stock is Class B Common Stock, a fraction, the numerator of which shall be the sum of (x) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, (y) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination and (z) the number of shares of Class B Common Stock which the aggregate consideration expected to be received by the Company upon the exercise, conversion or exchange of such rights, options, warrants or securities (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolu-

tion) would purchase at such Current Market Price of the Class B Common Stock and the denominator of which shall be the sum of (A) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, (B) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination and (C) the number of shares of Class B Common Stock so offered for subscription or purchase, either directly or indirectly, or into which such securities are convertible or exchangeable; or

(3) in the case such class of Common Stock is both Class A Common Stock and Class B Common Stock, the greater of:

(i) the fraction described in clause (1) above; or

(ii) a fraction, the numerator of which shall be the sum of (w) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, (x) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination, (y) the number of shares of Class A Common Stock which the aggregate consideration expected to be received by the Company upon the exercise, conversion or exchange of such rights, options, warrants or securities (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) would purchase at such Current Market Price of the Class A Common Stock and (z) the number of shares of Class B Common Stock which the aggregate consideration expected to be received by the Company upon the exercise, conversion or exchange of such rights, options, warrants or securities (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) would purchase at such Current Market Price of the Class B Common Stock and the denominator of which shall be the sum of (A) the number of shares of Class A Common Stock outstanding at the close of business on the date fixed for such determination, (B) the number of shares of Class B Common Stock outstanding at the close of business on the date fixed for such determination, (C) the number of shares of Class A Common Stock so offered for subscription or purchase, either directly or indirectly, or into which such securities are convertible or exchangeable and (D) the number of shares of Class B Common Stock so offered for subscription or purchase, either directly or indirectly, or into which such securities are convertible or exchangeable; or

in each of clauses (1), (2) and (3) with such increase to become effective immediately after the opening of business on the day following the date fixed for such determination

(c) *Stock Splits, Reverse Splits and Combinations.* In case outstanding shares of any class of Common Stock shall be subdivided, split or reclassified into a greater number of shares of such class of Common Stock, the Automatic Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision, split or reclassification becomes effective shall be proportionately increased (in the case of a subdivision, split or reclas

sification of the Class B Common Stock, assuming the Class A Common Stock and the Class B Common Stock were a single class), and, conversely, in case outstanding shares of any class of Common Stock shall each be combined or reclassified into a smaller number of shares of such class of Common Stock, the Automatic Conversion Rate in effect at the opening of business on the day following the day upon which such combination or reclassification becomes effective shall be proportionately reduced (in the case of a combination or reclassification of the Class B Common Stock, assuming the Class A Common Stock and the Class B Common Stock were a single class), 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, split, reclassification or combination becomes effective.

(d) *Debt, Asset or Security Distributions*. (1) In case the Company shall, by dividend or otherwise, distribute to all holders of any class of the Common Stock evidences of its indebtedness, assets or securities (but excluding (w) dividend or distribution referred to in Section 9(ii)(a), (x) any rights, options, warrants or securities referred to in Section 9(ii)(b) with respect to such class of Common Stock, (y) any dividend, shares of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company in the case of a Spin-Off referred to in Section 9(ii)(d) or (z) any dividend or distribution paid in cash referred to in Section 9(ii)(e)), the Automatic Conversion Rate shall be increased by dividing the Automatic 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:

(i) in the case such class of Common Stock on which the dividend or other distribution is declared is Class A Common Stock, a fraction, the numerator of which shall be the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *less* the then aggregate fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to the Class A Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock;

(ii) in the case such class of Common Stock on which the dividend or other distribution is declared is Class B Common Stock, a fraction, the numerator of which shall be the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *plus* the Aggregate Current Market Price of the Class B Common Stock on the date fixed for such determination *less* the then aggregate fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to the Class B Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock; or

(iii) in the case such class of Common Stock on which the dividend or other distribution is declared is both Class A Common Stock and Class B Common Stock, the greater of:

(A) the fraction described in clause (i) above; or

(B) a fraction, the numerator of which shall be the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *plus* the Aggregate Current Market Price of the Class B Common Stock on the date fixed for such determination *less* the then aggregate fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to the Class A Common Stock *less* the then aggregate fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to the Class B Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock;

in each of clauses (i), (ii) and (iii) with such adjustment to become effective 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 any case in which this subparagraph (d)(1) is applicable, subparagraph (d)(2) of this Section 9(ii) shall not be applicable.

(2) In the case of a Spin-Off, the Automatic Conversion Rate in effect immediately before the close of business on the record date fixed for determination of such class of Common Stock stockholders entitled to receive that distribution will be increased by multiplying the Automatic Conversion Rate by:

(i) in the case such class of Common Stock on which the dividend or other distribution is declared is Class A Common Stock, a fraction, the numerator of which is the Aggregate Current Market Price of the Class A Common Stock on the date referred to in the succeeding sentence *plus* the aggregate Fair Market Value (as defined below) of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to the Class A Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock;

(ii) in the case such class of Common Stock on which the dividend or other distribution is declared is Class B Common Stock, a fraction, the numerator of which is the Aggregate Current Market Price of the Class A Common Stock on the date referred to in the succeeding sentence *plus* the Aggregate Current Market Price of the Class B Common Stock on the date referred to in the succeeding sentence *plus* the aggregate Fair Market Value of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to the Class B Common Stock and the denominator of which shall

be such Aggregate Current Market Price of the Class A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock; or

(iii) in the case such class of Common Stock on which the dividend or other distribution is declared is both Class A Common Stock and Class B Common Stock, the greater of:

(A) the fraction described in clause (i) above; or

(B) a fraction, the numerator of which is the Aggregate Current Market Price of the Class A Common Stock on the date referred to in the succeeding sentence *plus* the Aggregate Current Market Price of the Class B Common Stock on the date referred to in the succeeding sentence *plus* the aggregate Fair Market Value of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to the Class A Common Stock *plus* the aggregate Fair Market Value of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to the Class B Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock.

Any adjustment to the Automatic Conversion Rate under this subparagraph (d)(2) will occur at the earlier of (A) the tenth Trading Day from, and including, the effective date of the Spin-Off and (B) the date of the securities being offered in the Initial Public Offering of the Spin-Off, if that Initial Public Offering is effected simultaneously with the Spin-Off.

(e) *Cash Distributions*. In case the Company shall by dividend or otherwise, distribute to all holders of any class of the Common Stock cash (excluding any cash that is distributed in a Reorganization Event to which Section 9(iii) applies), the Automatic Conversion Rate shall be increased by dividing the Automatic 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:

(1) in the case such class of Common Stock on which the dividend or other distribution is declared is Class A Common Stock, a fraction, the numerator of which shall be equal to the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *less* an amount equal to the aggregate amount of such cash distribution applicable to the Class A Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock;

(2) in the case such class of Common Stock on which the dividend or other distribution is declared is Class B Common Stock, a fraction, the numerator of which shall be equal to the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *plus* the Aggregate Current Market Price of the Class B Common Stock on the date fixed for such determination *less* an amount equal to the aggregate amount of such cash distribution applicable to the Class B Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class

A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock; or

(3) in the case such class of Common Stock on which the dividend or other distribution is declared is both Class A Common Stock and Class B Common Stock, the greater of:

(i) the fraction described in clause (1) above; or

(ii) a fraction, the numerator of which shall be equal to the Aggregate Current Market Price of the Class A Common Stock on the date fixed for such determination *plus* the Aggregate Current Market Price of the Class B Common Stock on the date fixed for such determination *less* an amount equal to the aggregate amount of such cash distribution applicable to the Class A Common Stock *less* an amount equal to the aggregate amount of such cash distribution applicable to the Class B Common Stock and the denominator of which shall be such Aggregate Current Market Price of the Class A Common Stock *plus* such Aggregate Current Market Price of the Class B Common Stock;

in each of clauses (1), (2) and (3) with such increase to become effective immediately after the opening of business on the day following the date fixed for such determination

(f) *Tender Offers*. In case (x) a tender or exchange offer made by the Company or any Subsidiary of the Company for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended through the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution) that combined together with (y) the aggregate of the cash *plus* the fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of such tender or exchange offer, of consideration payable in respect of any other tender or exchange offer by the Company or any subsidiary of the Company for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender or exchange offer and in respect of which no adjustment pursuant to this Section 9(ii)(f), exceeds 10% of the product of the Current Market Price of the Class A Common Stock as of the last time (the "*Expiration Time*") tenders could have been made pursuant to such tender or exchange offer (as amended through the expiration thereof) times the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Automatic Conversion Rate shall be increased by dividing the Automatic Conversion Rate immediately prior to the close of business on the date of the Expiration Time by:

(1) in the case such class of Common Stock is Class A Common Stock, a fraction, the numerator of which shall be equal to (x) the product of (I) the Current Market Price of the Class A Common Stock on the date of the Expiration Time and (II) the num-

ber of shares of Class A Common Stock outstanding (including any tendered shares of Class A Common Stock of Class A Common Stock) on the date of the Expiration Time *less* (y) the amount of cash *plus* the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Class A Common Stock based on the transactions described in clauses (1) and (2) of this paragraph (f) (assuming in the case of clause (1) the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of Class A Purchased Shares), and the denominator of which shall be equal to the product of (x) the Current Market Price of the Class A Common Stock on the date of the Expiration Time and (y) the number of shares of Class A Common Stock outstanding (including any tendered shares) on the date of the Expiration Time *less* the number of all shares of Class A Common Stock validly tendered, not withdrawn and accepted for payment on the date of the Expiration Time (such validly tendered shares, up to any such maximum, being referred to as the "*Class APurchased Shares*"); and

(2) in the case such class of Common Stock is Class B Common Stock, a fraction, the numerator of which shall be equal to (x) the product of (I) the Current Market Price of the Class A Common Stock on the date of the Expiration Time and (II) the number of shares of Class A Common Stock outstanding (including any tendered shares of Class A Common Stock) on the date of the Expiration Time *plus* (y) the product of (I) the Current Market Price of the Class B Common Stock on the date of the Expiration Time and (II) the number of shares of Class B Common Stock outstanding (including any tendered shares of Class B Common Stock) on the date of the Expiration Time *less* (z) the amount of cash *plus* the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Class B Common Stock based on the transactions described in clauses (1) and (2) of this paragraph (f) (assuming in the case of clause (1) the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of Class B Purchased Shares), and the denominator of which shall be equal to the sum of (x) the product of (I) the Current Market Price of the Class A Common Stock on the date of the Expiration Time and (II) the number of shares of Class A Common Stock outstanding (including any tendered shares of Class A Common Stock) on the date of the Expiration Time plus (y) the product of (I) the Current Market Price of the Class B Common Stock on the date of the Expiration Time and (II) the number of shares of Class B Common Stock outstanding (including any tendered shares of Class B Common Stock) on the date of the Expiration Time *less* the number of all shares of Class B Common Stock validly tendered, not withdrawn and accepted for payment on the date of the Expiration Time (such validly tendered shares, up to any such maximum, being referred to as the "*Class B Purchased Shares*"); or

(3) in the case such class of Common Stock on which the dividend or other distribution is declared is both Class A Common Stock and Class B Common Stock, the greater of:

(i) the fraction described in clause (1) above; or

(ii) a fraction, the numerator of which shall be equal to (w) the product of (I) the Current Market Price of the Class A Common Stock on the date of the Ex-

piration Time and (II) the number of shares of Class A Common Stock outstanding (including any tendered shares of Class A Common Stock) on the date of the Expiration Time *plus* (x) the product of (I) the Current Market Price of the Class B Common Stock on the date of the Expiration Time and (II) the number of shares of Class B Common Stock outstanding (including any tendered shares of Class B Common Stock) on the date of the Expiration Time *less* (y) the amount of cash *plus* the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Class A Common Stock based on the transactions described in clauses (1) and (2) of this paragraph (f) (assuming in the case of clause (1) the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of Class A Purchased Shares) *less* (z) the amount of cash *plus* the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Class B Common Stock based on the transactions described in clauses (1) and (2) of this paragraph (f) (assuming in the case of clause (1) the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of Class B Purchased Shares), and the denominator of which shall be equal to the sum of (x) the product of (I) the Current Market Price of the Class A Common Stock on the date of the Expiration Time and (II) the number of shares of Class A Common Stock outstanding (including any tendered shares of Class A Common Stock) on the date of the Expiration Time *less* the number of Class A Purchased Shares plus (y) the product of (I) the Current Market Price of the Class B Common Stock on the date of the Expiration Time and (II) the number of shares of Class B Common Stock outstanding (including any tendered shares of Class B Common Stock) on the date of the Expiration Time *less* the number of Class B Purchased Shares

(g) *Calculation of Adjustments*. All adjustments to the Automatic Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock (or if there is not a nearest 1/10,000th of a share to the next lower 1/10,000th of a share). No adjustment in the Automatic Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, *however*, that any adjustments which by reason of this paragraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment. If an adjustment is made to the Automatic Conversion Rate pursuant to paragraph (a), (b), (c), (d), (e), (f) or (h) of this Section 9(ii), an adjustment shall also be made to the Applicable Market Value solely to determine which of clause (a), (b) or (c) of the definition of Automatic Conversion Rate will apply on the applicable conversion date. Such adjustment shall be made by multiplying the Applicable Market Value by a fraction, the numerator of which shall be the Automatic Conversion Rate immediately before such adjustment and the denominator of which shall be the Automatic Conversion Rate immediately after such adjustment pursuant to paragraph (a), (b), (c), (d), (e), (f) or (h) of this Section 9(ii); *provided*, *however*, that if such adjustment to the Automatic Conversion Rate is required to be made pursuant to the occurrence of any of the events contemplated by paragraph (a), (b), (c), (d), (e), (f) or (h) of this Section 9(ii) during the period taken into consideration for determining the Applicable Market Value, appropriate and customary adjustments shall be made to the Automatic Conversion Rate.

(h) *Increase of Automatic Conversion Rate*. The Company may make such increases in the Automatic Conversion Rate, in addition to those required by this Section 9(ii), as it considers to be advisable in order to avoid or diminish any income tax to any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for income tax purposes or for any other reasons.

(i) *Notice of Adjustment*. Whenever the Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8) is adjusted in accordance with this Section 9(ii), the Company shall: (1) forthwith compute the Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8) in accordance with this Section 9(ii) and prepare and transmit to the Transfer Agent and the Depositary an Officer's Certificate setting forth the Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8), the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and (2) as soon as practicable following the occurrence of an event that requires an adjustment to the Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8) pursuant to this Section 9(ii) (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware), provide a written notice to the Holders of the occurrence of such event and a statement setting forth in reasonable detail the method by which the adjustment to the Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8) was determined and setting forth the adjusted Automatic Conversion Rate (or the number of shares of Class A Common Stock to be delivered on any conversion date upon an early conversion as set forth in Section 6, 7 or 8).

(iii) In the event of:

(a) any consolidation or merger of the Company with or into another Person or of another Person with or into the Company;

(b) any sale, transfer, lease or conveyance to another Person of the property of the Company as an entirety or substantially as an entirety; or

(c) any reclassification (other than a reclassification to which paragraph (c) of Section 9(ii) applies),

(any such event, a "*Reorganization Event*"), each share of Series A Mandatory Convertible Preferred Stock prior to such Reorganization Event shall, after such Reorganization Event, be converted into the right to receive the kind and amount of securities, cash and other property receivable in such Reorganization Event (without any interest thereon, and without any right to dividends or distributions thereon which have a record date that is prior to the date of the Reorganization Event) per share of Series A Mandatory Convertible Preferred Stock by a holder of Class A Common Stock that (1) is not a Person with which the Company consolidated or into

which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (any such Person, a "*Constituent Person*"), or an Affiliate (as defined below) of a Constituent Person to the extent such Reorganization Event provides for different treatment of Common Stock held by Affiliates of the Company and non-Affiliates, and (2) has failed to exercise the rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such Reorganization Event (*provided, however,* that if the kind or amount of securities, cash and other property receivable upon such Reorganization Event is not the same for each share of Class A Common Stock held immediately prior to such Reorganization Event by other 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 9(iii) the kind and amount of securities, cash and other property receivable upon such Reorganization Event by 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). On the Automatic Conversion Date, the Automatic Conversion Rate then in effect shall be applied to the value or amount on the Automatic Conversion Date of such securities, cash or other property.

On the occurrence of such a Reorganization Event, the Person formed by such consolidation or merger or the Person which acquires the assets of the Company shall execute and deliver to the Transfer Agent an agreement supplemental hereto providing that the Holder of each share of Series A Mandatory Convertible Preferred Stock that remains outstanding after the Reorganization Event (if any) shall have the rights provided by this Section 9(iii). Such supplemental agreement shall provide for adjustments which, for events subsequent to the effective date of such supplemental agreement, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 9. The above provisions of this Section 9(iii) shall similarly apply to successive Reorganization Events.

Section 10. *Definitions*.

(i) "*Affiliate*" has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.

(ii) "*Aggregate Market Price*" of any class of Common Stock as of any date means the product of the number of shares or such Class of Common Stock outstanding as of such date and the Current Market Price of such class of Common Stock as of such date.

(iii) "*Applicable Market Value*" means the average of the Closing Prices per share of Class A Common Stock on each of the 20 consecutive Trading Days ending on the third Trading Day immediately preceding the Automatic Conversion Date.

(iv) "*Board Resolution*" means a copy of a resolution certified by the Secretary or any Assistant Secretary of the Company to have been duly adopted by the Board of Directors or a duly authorized committee thereof and to be in full force and effect and filed with the Transfer Agent.

(v) "*Business Day*" means any day other than a Saturday or Sunday or any other day on which banks in The City of New York are authorized or required by law or executive order to close.

(vi) "*Capital Stock*" of any Person means any and all shares, interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

(vii) "*Certificate of Designations*" means this Certificate of Designations of the 5.75% Series A Mandatory Convertible Preferred Stock of Constellation Brands, Inc.

(viii) The "*Closing Price*" of the Common Stock or any securities distributed in a Spin-Off, as the case may be, on any date of determination means the closing sale price (or, if no closing sale price is reported, the last reported sale price) per share on the New York Stock Exchange ("*NYSE*") on such date or, if such security is not listed for trading on NYSE on any such date, as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed or quoted or, if such security is not so listed or quoted on a U.S. national or regional securities exchange, as reported by the Nasdaq stock market or, if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization or, if such bid price is not available, the market value of such security on such date as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company.

(ix) "*Corporate Trust Office*" means the principal corporate trust office of the Transfer Agent at which, at any particular time, its corporate trust business shall be administered.

(x) "*Current Market Price*" with respect to any class of Common Stock means (a) on any day the average of the Closing Prices of such class of Common Stock for the five consecutive Trading Days preceding the earlier of the day preceding the day in question and the day before the "ex date" with respect to the issuance or distribution requiring computation, (b) in the case of any Spin-Off that is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off, the Closing Price of such class of Common Stock on the Trading Day on which the initial public offering price of the securities being distributed in the Spin-Off is determined, and (c) in the case of any other Spin-Off, the average of the Closing Prices of such class of Common Stock over the first 10 Trading Days after the effective date of such Spin-Off. For purposes of this paragraph, the term "ex date," when used with respect to any issuance or distribution, shall mean the first date on which such class of Common Stock trades in a regular way on such exchange or in such market without the right to receive such issuance or distribution.

(xi) "*Depositary*" means Mellon Investor Services LLC, a New York limited liability company, and any successor as Depositary relating to the Series A Mandatory Convertible Preferred Stock.

(xii) "*Fair Market Value*" means (a) in the case of any Spin-Off that is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off, the initial public offering price of those securities, and (b) in the case of any other Spin-Off, the average of the Closing Prices of the securities being distributed in the Spin-Off over the first 10 Trading Days after the effective date of such Spin-Off.

(xiii) "*Holder*" means the Person in whose name a share of Series A Mandatory Convertible Preferred Stock is registered.

(xiv) "*Initial Public Offering*" means the first time securities of the same class or type as the securities being distributed in a Spin-Off are offered to the public for cash.

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

(xvi) "*Officer's Certificate*" means a certificate signed by two Officers.

(xvii) "*Person*" means any individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

(xviii) "*Provisional Conversion Date*" means the date fixed for conversion of shares of Series A Mandatory Convertible Preferred Stock into shares of Class A Common Stock pursuant to Section 6 above or, if the Company shall default in the cash payment of (a) an amount equal to any accrued and unpaid dividends on the shares of Series A Mandatory Convertible Preferred Stock then outstanding, whether or not declared and (b) the present value of all remaining dividend payments on the shares of Series A Mandatory Convertible Preferred Stock then outstanding, through and including September 1, 2006, in connection with such conversion on such date, the date the Company actually makes such payment.

(xix) "*Spin-Off*" means a dividend or other distribution of shares of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company.

(xx) "*Subsidiary*" means, with respect to any Person, (a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person (or a combination thereof) and (b) any partnership (1) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (2) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

(xxi) "*Trading Day*" means a day on which the applicable class of Common Stock or any security distributed in a Spin-Off, as the case may be, (A) is not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business and (B) has traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of such security.

(xxii) "*Transfer Agent*" means Mellon Investor Services LLC unless and until a successor is selected by the Company, and then such successor.

(xxiii) "*Treasury Yield*" means the yield to maturity at the time of computation of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days prior to the Provisional Conversion Date (or, if such Statistical Release is no longer published, any publicly available source for similar market data)) most nearly equal to the then remaining term to September 1, 2006; *provided*, *however*, that if the then remaining term to September 1, 2006 is not equal to the constant maturity of a U.S. Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of U.S. Treasury securities for which such yields are given, except that if the then remaining term to September 1, 2006 is *less* than one year, the weekly average yield on actually traded U.S. Treasury securities adjusted to a constant maturity of one year shall be used.

Section 11. *Fractional Shares*.

No fractional shares of Class A Common Stock shall be issued to Holders upon conversion of the Series A Mandatory Convertible Preferred Stock. In lieu of any fraction of a share of Class A Common Stock which would otherwise be issuable in respect of the aggregate number of shares of the Series A Mandatory Convertible Preferred Stock surrendered by the same Holder upon a conversion as described in Section 5, 6, 7 or 8 or which would otherwise be issuable in respect of a stock dividend payment upon a conversion as described in Section 5, such Holder shall have the right to receive an amount in cash (computed to the nearest cent) equal to the same fraction of (a) in the case of Section 5, the Current Market Price of the Class A Common Stock or (b) in the case of Section 6, 7 or 8, the Closing Price of the Class A Common Stock determined as of the second Trading Day immediately preceding the effective date of conversion. If more than one share of Series A Mandatory Convertible Preferred Stock shall be surrendered for conversion at one time by or for the same Holder, the number of full shares of Class A Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series A Mandatory Convertible Preferred Stock so surrendered.

Section 12. *Miscellaneous*.

(i) Procedures for conversion of shares of Series A Mandatory Convertible Preferred Stock, in accordance with Section 5, 6, 7 or 8, not held in certificated form will be governed by arrangements among the depositary of the shares of Series A Mandatory Convertible Preferred Stock, its participants and Persons that may hold beneficial interests through such participants designed to permit settlement without the physical movement of certificates. Payments, transfers, deliveries, exchanges and other matters relating to beneficial interests in global security certificates may be subject to various policies and procedures adopted by the depositary from time to time.

(ii) The Liquidation Preference and the annual dividend rate set forth herein each shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series A Mandatory Convertible Preferred Stock. Such adjustments shall be determined in good faith by the Board of Directors or a

duly authorized committee thereof and submitted by the Company to the Transfer Agent.

(iii) For the purposes of Section 9, the number of shares of any class 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 such class of Common Stock.

(iv) If the Company shall take any action affecting all or any portion of the Common Stock, other than any action described in Section 9, that in the opinion of the Board of Directors or a duly authorized committee thereof would materially adversely affect the conversion rights of the Holders, then the Automatic Conversion Rate, the Provisional Conversion Rate and/or the Optional Conversion Rate for the Series A Mandatory Convertible Preferred Stock may be adjusted, to the extent permitted by law, in such manner, and at such time, as the Board of Directors or a duly authorized committee thereof may determine to be equitable in the circumstances.

(v) The Company covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares of Class A Common Stock for the purpose of effecting conversion of the Series A Mandatory Convertible Preferred Stock, the maximum number of shares of Class A Common Stock deliverable upon the conversion of all outstanding shares of Series A Mandatory Convertible Preferred Stock not theretofore converted. For purposes of this Section 12(v), the number of shares of Class A Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series A Mandatory Convertible Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(vi) The Company covenants that any shares of Class A Common Stock issued upon conversion of the Series A Mandatory Convertible Preferred Stock or issued in respect of a stock dividend payment upon a conversion described in Section 5 shall be validly issued, fully paid and non-assessable.

(vii) The Company shall use its best efforts to list the shares of Class A Common Stock required to be delivered upon conversion of the Series A Mandatory Convertible Preferred Stock or upon issuance in respect of a stock dividend payment upon a conversion described in Section 5, prior to such delivery, upon each national securities exchange or quotation system, if any, upon which the outstanding Class A Common Stock is listed at the time of such delivery.

(viii) Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of the Series A Mandatory Convertible Preferred Stock or upon issuance in respect of a stock dividend payment upon a conversion described in Section 5, the Company shall use its best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(ix) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock or other securities or property upon conversion of the Series A Mandatory Convertible Preferred Stock pursuant thereto or upon issuance in respect of a stock dividend payment upon a conversion described in Section 5; *provided*, *however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of shares of Class A Common Stock or other securities or property in a name other than that of the Holder of the Series A Mandatory Convertible Preferred Stock to be converted and no such issue or delivery shall be made unless and until the Person requesting such issue or delivery has paid to the Company the amount of any such tax or established, to the reasonable satisfaction of the Company, that such tax has been paid or is not applicable.

(x) The Series A Mandatory Convertible Preferred Stock is not redeemable.

(xi) The Series A Mandatory Convertible Preferred Stock is not entitled to any preemptive or subscription rights in respect of any securities of the Company.

(xii) Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

(xiii) Series A Mandatory Convertible Preferred Stock may be issued in fractions of a share which shall entitle the Holder, in proportion to such Holder’s fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of Holders of Series A Mandatory Convertible Preferred Stock.

(xiv) Subject to applicable escheat laws, any monies set aside by the Company in respect of any payment with respect to shares of the Series A Mandatory Convertible Preferred Stock, or dividends thereon, and unclaimed at the end of two years from the date upon which such payment is due and payable shall revert to the general funds of the Company, after which reversion the Holders of such shares shall look only to the general funds of the Company for the payment thereof. Any interest accrued on funds so deposited shall be paid to the Company from time to time.

(xv) Except as may otherwise be required by law, the shares of Series A Mandatory Convertible Preferred Stock shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Certificate of Designations or the Restated Certificate of Incorporation.

(xvi) The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(xvii) If any of the voting powers, preferences and relative, participating, optional and other special rights of the Series A Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of the Series A Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof set forth herein which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of the Series A Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof shall, neverthe*less*, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of the Series A Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of the Series A Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

(xviii) Shares of Series A Mandatory Convertible Preferred Stock that (a) have not been issued on or before September 5, 2003 or (b) have been issued and reacquired in any manner, including shares purchased or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of Delaware) have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company; *provided*, *however*, that any issuance of such shares as Series A Mandatory Convertible Preferred Stock must be in compliance with the terms hereof.

(xix) If any of the Series A Mandatory Convertible Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated Series A Mandatory Convertible Preferred Stock certificate, or in lieu of and substitution for the Series A Mandatory Convertible Preferred Stock certificate lost, stolen or destroyed, a new Series A Mandatory Convertible Preferred Stock certificate of like tenor and representing an equivalent number of shares of Series A Mandatory Convertible Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series A Mandatory Convertible Preferred Stock certificate and indemnity, if requested, satisfactory to the Company and the Transfer Agent. The Company is not required to issue any certificates representing Series A Mandatory Convertible Preferred Stock on or after the Automatic Conversion Date. In place of the delivery of a replacement certificate following the Automatic Conversion Date, the Transfer Agent, upon delivery of the evidence and indemnity described above, will deliver the shares of Class A Common Stock pursuant to the terms of the Series A Mandatory Convertible Preferred Stock evidenced by the certificate.

IN WITNESS WHEREOF, the Company has caused this certificate to be duly executed by Thomas S. Summer, Executive Vice President and Chief Financial Officer, and attested by H. Elaine Farry, its Assistant Secretary, this 29th day of July, 2003.

CONSTELLATION BRANDS, INC.

By: /S/ THOMAS S. SUMMER

Name: Thomas S. Summer
Title: Executive Vice President and Chief Financial Officer

ATTEST:

By: /S/ H. ELAINE FARRY

Name: H. Elaine Farry
Title: Assistant Secretary

Exhibit 4.2

DEPOSIT AGREEMENT

Among

CONSTELLATION BRANDS, INC.,

MELLON INVESTOR SERVICES LLC, as Depositary,

and

THE HOLDERS FROM TIME TO TIME OF
THE RECEIPTS DESCRIBED HEREIN

Dated as of July 30, 2003

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DEPOSIT AGREEMENT dated as of July 30, 2003, among CONSTELLATION BRANDS, INC., a Delaware corporation, MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, and the holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of up to 170,500 shares of 5.75% Series A Mandatory Convertible Preferred Stock $1,000 liquidation preference per share, of the Company with the Depositary and registered in the name of the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts evidencing Depositary Shares in respect of the Convertible Preferred Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement.

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed by and among the parties hereto as follows:

ARTICLE I

Definitions

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement:

"*Authorizing Resolutions*" shall mean the resolutions adopted by the Board of Directors of the Company or a duly authorized committee thereof establishing and setting forth the rights, preferences and privileges of the Convertible Preferred Stock and filed in the form of a certificate of the voting powers, designations, preferences and relative participating, optional or other special rights, and qualifications, limitations and restrictions thereof, of the Convertible Preferred Stock with the Secretary of State of the State of Delaware pursuant to Section 151 of the General Corporation Law of the State of Delaware, in the form attached hereto as Exhibit B.

"*Automatic Conversion*" shall mean the conversion of the Depositary Shares into shares of Class A Common Stock as described in Section 2.05 hereof.

"*Business Day*" means any day other than a Saturday or Sunday or any other day on which banks in the City of New York are authorized or required by law or executive order to close.

"*Class A Common Stock*" shall mean the Class A Common Stock, par value $.01, of the Company.

"*Company*" shall mean Constellation Brands, Inc., a Delaware corporation, and its successors.

"*Convertible Preferred Stock*" shall mean shares of the Company's 5.75% Series A Mandatory Convertible Preferred Stock.

"*Deposit Agreement*" shall mean this Deposit Agreement, as amended or supplemented from time to time.

"*Depositary*" shall mean Mellon Investor Services LLC, a New Jersey limited liability company, and any successor as Depositary hereunder.

"*Depositary Shares*" shall mean Depositary Shares, each representing one-fortieth (1/40) of a share of Convertible Preferred Stock.

"*Depositary's Agent*" shall mean an agent appointed by the Depositary pursuant to Section 7.05.

"*Depositary's Office*" shall mean the office of the Depositary in New York, at which at any particular time its shareholder services business shall be administered.

"*Person*" shall mean any individual, corporation, limited liability company, partnership, association, trust or other entity or organization,

"*Provisional Conversion*" shall mean the conversion of Depositary Shares into shares of Class A Common Stock as described in Section 2.04.

"*Receipt*" shall mean one of the Receipts issued hereunder, whether in definitive or temporary form, which evidences the Depositary Shares.

"*record holder*" as applied to a Receipt shall mean the Person in whose name a Receipt is registered on the books of the Depositary maintained for such purpose.

"*Registrar*" shall mean any bank, trust company or other Person, which shall be appointed to register ownership and transfers of Receipts as herein provided.

ARTICLE II

Form of Receipts, Deposit of Convertible Preferred Stock, Execution and Delivery, Transfer, Surrender and Redemption of Receipts

SECTION 2.01. *Form and Transferability of Receipts*. Definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement and in form and substance satisfactory to the New York Stock Exchange, in each case with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon, and pursuant to, the written order of the Company delivered in compliance with Section 2.02 shall be authorized and instructed to, and shall, execute and deliver temporary Receipts which shall be substantially of the tenor of the definitive Receipts in lieu of which they are issued and in each case with such appropriate insertions, omissions, substitutions and other variations as the Persons executing such Receipts may determine, as evidenced

by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary is hereby authorized and instructed to, and shall, execute and deliver in exchange therefore definitive Receipts representing the same number of Depositary Shares as evidenced by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge therefore. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Convertible Preferred Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary;*provided*, *however*, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed manually by a duly authorized officer of the Depositary or, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of such Registrar. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Company, or which the Company has determined are required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Convertible Preferred Stock or the Depositary Shares may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

Title to Depositary Shares (and the interest in the Convertible Preferred Stock represented thereby) evidenced by a Receipt that is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery with the same effect as in the case of a negotiable instrument; *provided*, *however*, that until transfer of a Receipt shall be registered on the books of the Depositary as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the Person entitled to distributions of dividends or other distributions or payments with respect to the Convertible Preferred Stock, to exercise conversion rights or to receive any notice provided for in this Deposit Agreement and for all other purposes.

The Depositary shall not lend any Convertible Preferred Stock deposited hereunder.

SECTION 2.02. *Deposit of Convertible Preferred Stock; Execution and Delivery of Receipts in Respect Thereof* Subject to the terms and conditions of this Deposit Agreement,

the Company or any holder of Convertible Preferred Stock may from time to time deposit shares of Convertible Preferred Stock under this Deposit Agreement by delivery to the Depositary of a certificate or certificates for such shares of Convertible Preferred Stock to be deposited, properly endorsed or accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and together with a written order of the Company or such holder, as the case may be, directing the Depositary to execute and deliver to, or upon the written order of, the Person or Persons stated in such order a Receipt or Receipts for the number of Depositary Shares representing such deposited Convertible Preferred Stock.

Deposited Convertible Preferred Stock shall be held by the Depositary at the Depositary's Office or such other offices, if any, as the Depositary may designate.

Simultaneously with the execution and delivery hereof, the Company, on behalf of each underwriter of an interest in the Convertible Preferred Stock that is to be represented by the Depositary Shares, is depositing under this Deposit Agreement a certificate representing all outstanding shares of Convertible Preferred Stock, together with a written order of the Company authorizing and instructing the Depositary to execute and deliver Receipts for Depositary Shares representing such Convertible Preferred Stock registered in such names as have been previously designated by Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and UBS Securities LLC, as the representatives of the underwriters for the Depositary Shares that are to represent such Convertible Preferred Stock.

Upon receipt by the Depositary of a certificate or certificates for Convertible Preferred Stock deposited in accordance with the provisions of this Section 2.02, together with the other documents required as above specified, the Depositary, subject to the terms and conditions of this Deposit Agreement, is hereby authorized and instructed to, and shall, execute and deliver to or upon the written order of the Person or Persons named in the written order of the Company referred to above in this Section 2.02 one or more Receipts for the number of Depositary Shares attributable to such Convertible Preferred Stock so deposited and registered in such name or names as requested by such Person or Persons. The Depositary is hereby authorized and instructed to, and shall, execute and deliver such Receipt or Receipts at the Depositary's Office or such other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the Person requesting such delivery. However, in each case subsequent to the initial deposit hereunder, such delivery will be made only upon payment to the Depositary of all taxes and governmental charges and fees payable in connection with such deposit and the transfer of the deposited Convertible Preferred Stock. The Depositary shall not issue any Receipts other than Receipts for Depositary Shares representing Convertible Preferred Stock actually deposited with the Depositary. Such deposited Convertible Preferred Stock (and any dividends or other distributions thereon) shall be at all times segregated, separate and apart from the property of the Depositary and any cash or other funds shall be held by the Depositary in a non-interest bearing account.

Other than in the case of splits, combinations or other reclassifications affecting the Convertible Preferred Stock, or in the case of dividends or other distributions of Convertible Preferred Stock, if any, or unless the Company provides written notice to the Depositary as to a

different number of shares of Convertible Preferred Stock, there shall be deposited hereunder not more than 170,500 shares of Convertible Preferred Stock.

SECTION 2.03. *Conversion at the Option of Holders*. Subject to the terms and conditions of this Deposit Agreement and the Authorizing Resolutions, Receipts may be surrendered at any time prior to September 1, 2006 (the "*Automatic Conversion Date*") by the holders thereof with written instructions to the Depositary instructing it to convert any specified number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipts into shares of Class A Common Stock (and cash in lieu of fractional shares of Class A Common Stock) at the conversion rate then in effect in respect of the Convertible Preferred Stock determined by the Company in accordance with the Authorizing Resolutions and as set forth in the written notice to be delivered to the Depositary from time to time pursuant to the Authorizing Resolutions by the Company. A holder of a Receipt shall surrender such Receipt at the Depositary's Office or such other office as the Depositary may from time to time designate for such purpose, together with a notice of conversion thereof duly completed and executed and a proper assignment of such Receipt to the Company or in blank, thereby instructing the Depositary to cause the conversion of the number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt specified in such notice of conversion into shares of Class A Common Stock.

Upon receipt by the Depositary of a Receipt, together with a notice of conversion supplied by the holder of such Receipt and instructing the Depositary to convert a specified number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt, the Depositary is hereby authorized and instructed to, and shall, (a) give written notice to the transfer agent for the Convertible Preferred Stock of the number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt surrendered for conversion and the number of shares of Class A Common Stock to be delivered upon conversion of such shares of Convertible Preferred Stock and the amount of immediately available funds (as specified in writing by the Company), if any, to be delivered to the holder of such Receipts in payment of any fractional shares of Class A Common Stock otherwise issuable, (b) cancel such Receipt or, if a Registrar for Receipts (other than the Depositary) shall have been appointed, cause such Registrar to cancel such Receipt and (c) deliver to the transfer agent for the Convertible Preferred Stock or any other authorized agent of the Company (as specified in writing by the Company) certificates for the Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt, which certificates shall thereupon be canceled by such transfer agent or other authorized agent. As promptly as practicable after such transfer agent or other authorized agent of the Company has received such certificates from the Depositary, (a) the Company shall cause to be furnished to the Depositary a certificate or certificates evidencing such number of shares of Class A Common Stock, and such amount of immediately available funds, if any, in lieu of receiving fractional shares as specified in a written notice from the Company and (b) subject to the next succeeding sentence, the Depositary is hereby authorized and instructed to, and shall, deliver at its Depositary's Office, (i) a certificate or certificates evidencing the number of shares of Class A Common Stock into which the Convertible Preferred Stock represented by Depositary Shares as evidenced by the such Receipt has been converted and which have been provided by the Company, (ii) cash in lieu of receiving fractional shares of Class A Common Stock in accordance with Section 2.08 and which has been provided by the Company and (iii) the right to receive cash in an amount equal to all accrued and unpaid

dividends on such shares of Convertible Preferred Stock to the extent specified in a written notice from the Company.

Upon any optional conversion of the Convertible Preferred Stock represented by the Depositary Shares as evidenced by a Receipt, the Company shall not make any allowance, adjustment or payment with respect to dividends upon such Convertible Preferred Stock or shares of Class A Common Stock issued upon the conversion thereof, except as set forth in the Authorizing Resolutions. If Receipts are surrendered to the Depositary's Office or such other office as the Depositary may from time to time designate for such purpose for conversion between the close of business on the record date with respect to any dividend payment on the Convertible Preferred Stock and the opening of business on the next succeeding dividend payment date, any holder of Receipts surrendered with instructions to the Depositary for conversion of the Convertible Preferred Stock represented thereby shall remit to the Depositary with such Receipts an amount of funds equal to the dividend payable on the underlying Convertible Preferred Stock on such dividend payment date computed and paid as set forth in the Authorizing Resolutions. The Depositary shall have no duty to investigate or inquire whether Receipts representing shares of Convertible Preferred Stock are surrendered for conversion between the close of business on the record date and the opening of business on the next succeeding dividend payment date, and whether the amount of funds, if any, submitted by the holder is equal to the dividend payable on the underlying Convertible Preferred Stock on such dividend payment date or whether such was computed and paid as set forth in the Authorizing Resolutions.

In the event that optional conversion is elected by a holder with respect to less than all Depositary Shares as evidenced by a surrendered Receipt, upon such optional conversion the Depositary shall authenticate, countersign and deliver to such holder thereof, at the expense of the Company, a new Receipt evidencing the Depositary Shares as to which such optional conversion was not effected.

Delivery of Class A Common Stock and other property may be made by the delivery of certificates and which, if required by law in the judgment of the Company, shall be accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary's Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 2.04. *Provisional Conversion at the Option of the Company.* Subject to the terms and conditions of this Deposit Agreement and the Authorizing Resolutions, the Company may, at its option, prior to the Automatic Conversion Date, cause the conversion of all, but not less than all, the shares of Convertible Preferred Stock represented by the Depositary Shares as evidenced by Receipts into shares of Class A Common Stock at the conversion rate then in effect in respect of the Convertible Preferred Stock determined by the Company in accordance with the Authorizing Resolutions and as set forth in the written notice to be delivered to the Depositary from time to time by the Company pursuant to the Authorizing Resolutions; *provided*, *however*, that the conditions to the Company's exercise of its provisional conversion right, as set forth in the Authorizing Resolutions, are satisfied. The Company shall deliver an Officer's Certificate to the Depositary stating that it has complied with all of the conditions to the exercise of its provisional conversion rights set forth in the Authorization Resolutions, and the Depositary

shall have no duty or obligation to inquire or investigate whether the Company has complied with the terms of the Authorizing Resolutions.

A written notice (the "*Provisional Conversion Notice*") shall be sent by or on behalf of the Company, by first class mail, postage prepaid, to the record holders of the Depositary Shares (with a copy to the Depositary) as of the date of the Provisional Conversion Notice (a) notifying such record holders of the election of the Company to convert the shares of Convertible Preferred Stock represented by Depositary Shares and of the date of the optional conversion (the "*Provisional Conversion Date*"), which date shall not be less than 30 days nor be more than 60 days after the date of the Provisional Conversion Notice, (b) that all outstanding shares of Convertible Preferred Stock represented by the Depositary Shares on the Provisional Conversion Date will be automatically converted into shares of Class A Common Stock and the conversion rate at which such Provisional Conversion shall occur, (c) the amount of accrued and unpaid dividends, if any, payable with respect to each Depositary Share representing the shares of Convertible Preferred Stock to be so converted and the amount of such dividends that will be paid in cash and/or in shares of Class A Common Stock; (d) the place or places where Receipts to be so converted are to be surrendered for conversion; and (e) such additional information as the Company in its discretion deems appropriate.

The Company shall deliver to the Depositary irrevocable written instructions authorizing and instructing the Depositary, on behalf and at the expense of the Company, to cause the Provisional Conversion Notice to be duly mailed as soon as practicable after receipt of such irrevocable instructions from the Company and in accordance with the above provisions.

Following the exercise of the Company's right of optional conversion, upon receipt by the Depositary of a Receipt surrendered in accordance with this Section 2.04, the Depositary shall (a) give written notice to the transfer agent for the Convertible Preferred Stock of the number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt surrendered for conversion and the number of shares of Class A Common Stock to be delivered upon conversion of such shares of Convertible Preferred Stock and the amount of immediately available funds (as specified in writing by the Company), if any, to be delivered to the holders of such Receipts in payment of any fractional shares of Class A Common Stock otherwise issuable, (b) cancel the Depositary Share certificate representing the Receipts surrendered to the Depositary, or, if a Registrar for Receipts (other than the Depositary) shall have been appointed, cause such Registrar to cancel such Receipts and (c) deliver to the transfer agent for the Convertible Preferred Stock or any other authorized agent of the Company (as specified in writing by the Company) certificates for the Convertible Preferred Stock represented by such Depositary Shares as evidenced by such Receipts, which certificates shall thereupon be canceled by such transfer agent or other authorized agent. As promptly as practicable after such transfer agent or other authorized agent of the Company has received such certificates from the Depositary, (a) the Company shall cause to be furnished to the Depositary a certificate or certificates evidencing such number of shares of Class A Common Stock, and such amount of immediately available funds, if any, in lieu of receiving fractional shares, as determined by the Company to be necessary, and (b) subject to the next succeeding sentence, the Depositary is hereby authorized and instructed to, and shall, deliver at its Depositary's Office, (i) a certificate or certificates evidencing the number of shares of Class A Common Stock into which the Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt has been

converted and as provided by the Company, (ii) cash in lieu of receiving fractional shares of Class A Common Stock in accordance with Section 2.08 and as provided by the Company and (iii) the right to receive cash in an amount equal to (x) any accrued and unpaid dividends on such shares of Convertible Preferred Stock, whether or not declared, and (y) the present value of all remaining dividend payments on such shares of Convertible Preferred Stock through and including September 1, 2006, in each case determined by the Company (with a copy of such determination to the Depositary) in accordance with the terms of the Authorizing Resolutions.

Delivery of Class A Common Stock and other property may be made by the delivery of certificates and which, if required by law in the judgment of the Company, shall be accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary's Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 2.05. *Automatic Conversion*. Subject to the terms and conditions of this Deposit Agreement and the Authorizing Resolutions, on the Automatic Conversion Date all outstanding shares of Convertible Preferred Stock represented by the Depositary Shares shall be converted into shares of Class A Common Stock (and cash in lieu of fractional shares of Class A Common Stock) at the conversion rate then in effect in respect of the Convertible Preferred Stock determined in accordance with the Authorizing Resolutions and as set forth in a written notice to be delivered to the Depositary from time to time by the Company pursuant to the Authorizing Resolutions.

The Depositary shall, as directed by the Company, mail, first class postage prepaid, notice of such Automatic Conversion, not less than five and not more than 15 days prior to the Automatic Conversion Date. Such notice shall be mailed to each holder of Depositary Shares as evidenced by receipts at the address of such holder as the same appears on the records of the Depositary at the close of business on the second Business Day immediately preceding the date on which the mailing of such notices is commenced; but neither the failure to mail any such notice to one or more holders nor any defect in any notice shall affect the sufficiency of the proceedings for Automatic Conversion. The Company shall provide the Depositary with such notice, and each such notice shall state: (i) the Automatic Conversion Date; (ii) that all outstanding shares of Convertible Preferred Stock represented by the Depositary Shares on the Automatic Conversion Date will be automatically converted into shares of Class A Common Stock and the conversion rate at which such Automatic Conversion shall occur; (iii) the amount of accrued and unpaid dividends, if any, payable with respect to each Depositary Share representing the shares of Convertible Preferred Stock to be so converted and the amount of such dividends that will be paid in cash and/or in shares of Class A Common Stock; (iv) the place or places where Receipts to be so converted are to be surrendered for conversion; and (v) such additional information as the Company in its discretion deems appropriate.

The Company shall make such arrangements as it deems appropriate for the issuance of certificates, if any, representing shares of Class A Common Stock (both for purposes of the automatic conversion of shares of Convertible Preferred Stock and for purposes of any dividend payment by the Company of shares of Class A Common Stock in respect of accrued and unpaid dividends on the Convertible Preferred Stock, in each case in accordance with the Authorizing

Resolutions), and for any payment of cash in respect of accrued and unpaid dividends on the Convertible Preferred Stock or cash in lieu of fractional shares, if any, in each case in accordance with the Authorizing Resolutions, in exchange for and contingent upon the surrender of Receipts.

Following the Automatic Conversion Date and receipt by the Depositary of the Company's notice as provided above in the second paragraph of this Section 2.05, upon receipt by the Depositary of a Receipt surrendered in accordance with this Section 2.05, the Depositary shall (a) give written notice to the transfer agent for the Convertible Preferred Stock of the number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt surrendered for conversion and the number of shares of Class A Common Stock to be delivered upon conversion of such shares of Convertible Preferred Stock and the amount of immediately available funds, if any, to be delivered to the holders of the Depositary Shares as evidenced by Receipts in payment in lieu of any fractional shares of Class A Common Stock otherwise issuable, (b) cancel the Depositary Share certificate representing the Receipts surrendered to the Depositary, or, if a Registrar for Depositary Shares certificates (other than the Depositary) shall have been appointed, cause such Registrar to cancel such Depositary Share certificate as evidenced by such Receipts, and (c) deliver to the transfer agent for the Convertible Preferred Stock or any other authorized agent of the Company (as specified in writing by the Company) certificates for the Convertible Preferred Stock represented by such Depositary Shares as evidenced by the Receipts, which such certificates shall thereupon be cancelled by the transfer agent or other authorized agent. As promptly as practicable after such transfer agent or other authorized agent of the Company has received such certificates from the Depositary, (a) the Company shall cause to be furnished to the Depositary a certificate or certificates evidencing such number of shares of Class A Common Stock, and such amount of immediately available funds, if any, in lieu of receiving fractional shares, and as determined by the Company to be necessary and as specified in writing by the Company, and (b) subject to the next succeeding sentence, the Depositary is hereby authorized and instructed to, and shall, deliver at its Depositary's Office or such other offices as the Depositary may from time to time designate, (i) a certificate or certificates evidencing the number of shares of Class A Common Stock into which the Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt has been converted, and as provided by the Company (both for purposes of the Automatic Conversion of shares of Convertible Preferred Stock and for purposes of any dividend payment by the Company of shares of Class A Common Stock in respect of accrued and unpaid dividends on the Convertible Preferred Stock, in each case in accordance with the Authorizing Resolutions) and (ii) cash, as determined and specified in writing by the Company (x) in lieu of receiving fractional shares of Class A Common Stock in accordance with Section 2.08 and (y) in an amount equal to any accrued and unpaid dividends on the shares of Convertible Preferred Stock then outstanding, in each case determined by the Company (with a copy of such determination to the Depositary) in accordance with the provisions of the Authorizing Resolutions.

Delivery of Class A Common Stock and other property may be made by the delivery of certificates and other proper documents of title, which, if required by law, shall be properly endorsed or accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary's Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 2.06. *Early Conversion Upon Cash Merger*. On or before the fifth Business Day after the consummation of a Cash Merger (as defined in the Authorizing Resolutions), the Company or, at the written request and expense of the Company, the Depositary shall give all holders of Depositary Shares notice of the occurrence of such Cash Merger and of the right of Merger Early Conversion (as defined in the Authorizing Resolutions) arising as a result thereof. The Company shall also deliver a copy and/or form of such notice to the Depositary. Each such notice shall contain:

(i) the date, which shall be not less than 20 nor more than 30 calendar days after the date of such notice, on which the Merger Early Conversion will be effected (the "*Merger Early Conversion Date*");

(ii) the date, which shall be one Business Day prior to the Merger Early Conversion Date, by which the Merger Early Conversion right must be exercised (the "*Merger Early Conversion Exercise Date*");

(iii) the conversion rate in effect immediately before such Cash Merger and the kind and amount of securities, cash and other property receivable by the holder of Depositary Shares upon conversion pursuant to Section 9(iii) of the Authorizing Resolutions; and

(iv) the instructions a holder of Depositary Shares must follow to exercise the Merger Early Conversion right.

Receipts are to be surrendered to the Depositary, at the Depositary's Office, by 5:00 p.m., New York City time, on or before the Merger Early Conversion Exercise Date with written notice to the Depositary stating such holder's intention to convert early in connection with the Cash Merger in accordance with the Authorizing Resolutions. A holder of Depositary Shares shall surrender Receipts representing such Depositary Shares at such Depositary's Office or such other offices as the Depositary may from time to time designate for such purpose, together a proper assignment of such certificates to the Company or in blank.

Upon receipt of notice of the occurrence of a Cash Merger (as defined in the Authorizing Resolutions) and of the election of a holder of Depositary Shares to effect a Merger Early Conversion (as defined in the Authorizing Resolutions) and all other relevant information, the Depositary shall, as soon as practicable after the Merger Early Conversion Exercise Date, (a) give written notice to the transfer agent for the Convertible Preferred Stock of the number of shares of Convertible Preferred Stock represented by Depositary Shares as evidenced by the Receipt surrendered for conversion pursuant to a Merger Early Conversion, (b) cancel the Depositary Share certificate representing such Receipts surrendered to the Depositary in accordance with the instructions in such notice of Cash Merger, or, if a Registrar for Depositary Shares certificates (other than the Depositary) shall have been appointed, cause such Registrar to cancel such Depositary Share certificate as evidenced by the Receipts and (c) deliver to the transfer agent for the Convertible Preferred Stock by 5:00 p.m., New York City time, on or before the Merger Early Conversion Date, certificates for the Convertible Preferred Stock represented by such Depositary Shares as evidenced by the Receipts, which certificates shall thereupon be canceled by such transfer agent or other authorized agent. On or prior to the Merger Early Conversion

Date, (a) the Company shall cause to be furnished to the Depositary the kind and amount of securities, cash and other property receivable by the holder of the Receipt surrendered for conversion as provided in this Section 2.06 and (b) the Depositary is hereby authorized and instructed to, and shall, deliver at its Depositary's Office the kind and amount of securities, cash and other property receivable by such holder of Receipts so surrendered and as instructed by the Company.

In the event that Merger Early Conversion is elected by a holder with respect to less than all Depositary Shares represented by Depositary Shares as evidenced by a surrendered Receipt, upon such Merger Early Conversion the Company (or the successor to the Company hereunder) shall execute and the Depositary shall authenticate, countersign and deliver to such holder thereof, at the expense of the Company, a new Receipt evidencing the Depositary Shares as to which Merger Early Conversion was not effected.

Delivery of Class A Common Stock and other property may be made by the delivery of certificates and which, if required by law in the judgment of the Company, shall be accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary's Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 2.07. *Registration of Transfer of Receipts*. Subject to the terms and conditions of this Deposit Agreement, the Depositary shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in Person or by duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer. Thereupon the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Depositary Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the Person entitled thereto.

SECTION 2.08. *Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Convertible Preferred Stock* Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

Any holder of a Receipt or Receipts representing any number of shares of Convertible Preferred Stock may (unless the related Depositary Shares have previously been converted) withdraw the Convertible Preferred Stock on the basis of one share of Convertible Preferred Stock for every 40 Depositary Shares surrendered and all money and other property, if any, represented thereby by surrendering such Receipt or Receipts, at the Depositary's Office or at such other offices as the Depositary may designate for such withdrawals. Thereafter, without unreasonable delay, the Depositary shall deliver to such holder, or to the Person or Persons designated by such holder as hereinafter provided, the number of shares of Convertible Preferred Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but holders of such shares of Convertible Preferred Stock will not thereafter

be entitled to deposit such Convertible Preferred Stock hereunder or to receive Depositary Shares therefore. Delivery of the Convertible Preferred Stock and money and other property being withdrawn may be made by the delivery of such certificates, which, if required by law, shall be accompanied by proper instruments of transfer, and other instruments as the Company (with prompt written notice thereof to the Depositary) may deem appropriate.

If the Convertible Preferred Stock and the money and other property being withdrawn are to be delivered to a Person or Persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Convertible Preferred Stock, such record holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such record holder for withdrawal of such shares of Convertible Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Convertible Preferred Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depositary at the Depositary's Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.09. *Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts*. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, or the exercise of any right of conversion or withdrawal, the Depositary, any of the Depositary's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.07, may require the production of evidence satisfactory to it as to the identity and genuineness of any signature and may also require compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement, or with the approval of the Company, for any other reason. Without limitation of the foregoing, the Depositary shall not knowingly accept for deposit under this Deposit Agreement any Convertible Preferred Stock in connection with a distribution of Depositary Shares which is required to be registered under the Securities Act of 1933, unless a registration statement under such Act is in effect as to such Depositary Shares and such Convertible Preferred Stock.

The deposit of Convertible Preferred Stock may be refused, the delivery of Receipts against Convertible Preferred Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed and the Depositary has been so notified or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

SECTION 2.10. *Lost Receipts, etc.* In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary in its discretion may execute and deliver a Receipt of like

form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof and (ii) the furnishing to the Depositary with indemnification and/or surety bond satisfactory to it.

SECTION 2.11. *Cancellation and Destruction of Surrendered Receipts*. All Receipts surrendered to the Depositary or any Depositary's Agent shall be canceled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy all Receipts so canceled.

SECTION 2.12. *Lost Depositary Share Certificates, etc*. In case any Receipt shall be mutilated or be destroyed or lost or stolen, the Depositary will execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or, in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon the holder thereof filing with the Registrar evidence satisfactory to the Depositary of such destruction, loss or theft of such Receipt and the authenticity thereof and of his ownership thereof and furnishing the Depositary with indemnification and/or surety bond satisfactory to it.

ARTICLE III

Certain Obligations of Holders of Receipts and the Company

SECTION 3.01. *Filing Proofs, Certificates and Other Information*. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depositary or the Company may reasonably deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer or exchange, of any Receipt or the withdrawal of the Convertible Preferred Stock represented by the Depositary Shares evidenced by any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof or of the proceeds of the exercise of any conversion right specified in Section 2.03, 2.04, 2.05 or 2.06 until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. *Payment of Taxes or Other Governmental Charges*. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses, as provided in Section 5.07. Registration of transfer of any Receipt or any withdrawal of Convertible Preferred Stock and all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt or of the proceeds of the exercise of any conversion right specified in Section 2.03, 2.04, 2.05 or 2.06 may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the Convertible Preferred Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale or of the proceeds of the exercise of any conversion right specified in Section 2.03, 2.04, 2.05 or 2.06 may be

applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. *Warranty as to Convertible Preferred Stock*. The Company hereby represents, with respect to the initial deposit of Convertible Preferred Stock, and each subsequent depositor shall be deemed to represent, with respect to any deposit made by such Person, that each certificate for such Convertible Preferred Stock so deposited is valid, and that the Person making such deposit is duly authorized so to do. The Company hereby further represents and warrants that the Convertible Preferred Stock, when issued, will be validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of the Convertible Preferred Stock and the issuance of Receipts (and the conversion of the Convertible Preferred Stock into Class A Common Stock).

ARTICLE IV

The Deposited Securities; Notices

SECTION 4.01. *Cash Distributions*. Whenever the Depositary shall receive any cash dividends or other cash distributions on the Convertible Preferred Stock, the Depositary shall, subject to Sections 3.01 and 3.02 hereof hold such cash dividends or other cash distribution in a non-interest bearing account and then distribute such cash on the applicable dividend payment date to record holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of such dividends or distributions as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; *provided*, *however*, that in case the Company or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Convertible Preferred Stock an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly.

SECTION 4.02. *Distribution Other than Cash, Rights, Preferences or Privileges*. Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon Convertible Preferred Stock, the Depositary shall, subject to the Preferred Stock Transfer Agency Agreement dated as July 30, 2003 between Mellon Investor Services LLC and the Company and Sections 3.01 and 3.02 hereof, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Depositary may (but shall not be obligated to), with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.01 and 3.02, be distributed or made available for distribution, as the case may be, by the Depositary to record

holders of Receipts as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall not make any distribution of such securities unless the Company shall have provided an opinion of counsel stating that such securities have been registered under the Securities Act of 1933 or do not need to be registered.

SECTION 4.03. *Subscription Rights, Preferences or Privileges*. If the Company shall at any time offer or cause to be offered to the Persons in whose names Convertible Preferred Stock is recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Company to the record holders of Receipts in such manner as the Company may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Company in its reasonable discretion (after consultation with the Depositary); *provided*, *however*, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Company determines (after consultation with the Depositary) that it is not lawful or not feasible to make such rights, preferences or privileges available to holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, then the Company, in its reasonable discretion (after consultation with the Depositary), may, or may instruct the Depositary to, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.01 and 3.02, be distributed by the Depositary (upon its receipt thereof) to the record holders of Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall not make any distribution of any such rights, preferences or privileges unless the Company shall have provided an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act of 1933 or do not need to be registered.

If registration under the Securities Act of 1933 of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees with the Depositary that the Company will file promptly a registration statement pursuant to such Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Company or the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such registration statement shall have become effective, or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of such Act.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees with the Depositary that the Company will use its best efforts to take such action or obtain such authorization,

consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.04. *Notice of Dividends, etc.; Fixing of Record Date for Holders of Receipts*. Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to the Convertible Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of Convertible Preferred Stock are entitled to vote or of which holders of Convertible Preferred Stock are entitled to notice or any request for action by written consent, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall (upon receipt of such notice, which notice shall be deemed to constitute written instruction from the Company) in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to the Convertible Preferred Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges, or who shall be entitled to notice of such meeting or any request for action by written consent or for any other appropriate reasons.

SECTION 4.05. *Voting Rights*. Upon receipt of notice of any meeting at which the holders of Convertible Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Convertible Preferred Stock represented by their respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a Person (other than the Depositary) designated by the Company) and a brief statement as to the manner in which such instructions maybe be given. Upon the written request of the holders of Receipts on the relevant record date (which shall be the same date as the record date for the Convertible Preferred Stock), the Depositary shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Convertible Preferred Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Company hereby agrees to take all reasonable action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such Convertible Preferred Stock or cause such Convertible Preferred Stock to be voted. The Depositary will not vote shares of Convertible Preferred Stock to the extent it does not receive specific written instructions from the holders of Depositary Shares representing the corresponding Convertible Preferred Stock. Any voting instructions given hereunder shall be revocable to the same extent as a proxy granted with respect to the Convertible Preferred Stock represented thereby.

SECTION 4.06. *Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc.* Upon any change in par or stated value or liquidation preference, split-up, combination or any other reclassification of the Convertible Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation affecting the Company or to which it is a party, the Depositary may in its discretion with the approval of, and shall upon the instructions of, the Company, (i) make such adjustments as are certified by the Company in (x) the fraction of an interest represented by one Depositary Share in one share of Convertible Preferred Stock and (y) the ratio of the conversion rate per Depositary Share to the conversion

rate of a share of Convertible Preferred Stock, in each case as may be necessary fully to reflect the effects of such change in par or stated value or liquidation preference, split-up, combination or other reclassification of Convertible Preferred Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Convertible Preferred Stock as new deposited securities so received in exchange for or upon conversion or in respect of such Convertible Preferred Stock. In any such case, the Depositary may in its discretion, with the approval of the Company, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par or stated value or liquidation preference, split-up, combination or other reclassification of the Convertible Preferred Stock or any such recapitalization, reorganization, merger, amalgamation or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Convertible Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the Convertible Preferred Stock represented by such Receipts might have been converted or for which such Convertible Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. *Inspection of Reports*. The Depositary shall transmit to the record holders of Receipts, at the addresses of such record holders as set forth on the books of the Depositary, and shall make available for inspection by holders of Receipts at the Depositary's Office, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of Convertible Preferred Stock. The Registrar for the Depositary Shares will keep books for the transfer of the Depositary Shares. At all reasonable times such books will be open for inspection by holders of the Depositary Shares to the same extent as a record holder of the shares of Convertible Preferred Stock may inspect books for the transfer thereof.

SECTION 4.08. *Lists of Receipt Holders*. Promptly upon request from time to time by the Company, the Depositary shall furnish to it a list, as of a recent date, of the names, addresses and holdings of Depositary Shares of all Persons in whose names Receipts are registered on the books of the Depositary.

ARTICLE V

The Depositary, the Depositary's Agents, the Registrar and the Company

SECTION 5.01. *Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar*. Upon execution of this Deposit Agreement and until termination of this Deposit Agreement in accordance with its terms, the Depositary shall maintain at the Depositary's Office facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of Receipts; *provided*, *however*, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such Person's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

The Depositary may, with the approval of the Company, appoint a Registrar for registration of the Receipts or the Depositary Shares evidenced thereby. If the Receipts or the Depositary Shares evidenced thereby or the Convertible Preferred Stock represented by such Depositary Shares shall be listed on the New York Stock Exchange, the Depositary will appoint a Registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with any requirements of the New York Stock Exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of the New York Stock Exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, such Depositary Shares or such Convertible Preferred Stock are listed on one or more stock exchanges or other automated quotation systems, the Depositary will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such Convertible Preferred Stock as may be required by law or applicable stock exchange or automated quotation system regulation.

SECTION 5.02. *Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company*. None of the Depositary, any Depositary's Agent, the Registrar or the Company shall incur any liability to any holder of any Receipt, Depositary Share or Class A Common Stock issued upon the conversion of the Convertible Preferred Stock if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Restated Certificate of Incorporation (including the Authorizing Resolutions) or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability to any holder of a Receipt, Depositary Share or Class A Common Stock issued upon the conversion of the Convertible Preferred Stock (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except, in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) of the party charged with such exercise or failure to exercise.

SECTION 5.03. *Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company.* None of the Depositary, any Depositary's Agent, the Registrar or the Company assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, Depositary Share, Convertible Preferred Stock or Common Stock issued upon the conversion of the Convertible Preferred Stock other than for its own gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

The Depositary, any Depositary's Agent and the Registrar shall be liable hereunder to the Company and any other Person only for its own gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Anything to the contrary notwithstanding, in no event shall the Depositary, any Depositary's Agent or the Registrar be liable for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Depositary, any Depositary's Agent or the Registrar, as the case may be, has been advised of the likelihood of such loss or damage. Any liability of the Depositary, any Depositary's Agent or the Registrar under this Deposit Agreement will be limited to the amount of aggregate annual fees paid by the Company to the Depositary under this Depositary Agreement and under any other agreement to which the Company and the Depositary are a party and to which the Depositary is providing services. The obligations of the Company set forth in this Section 5.03 shall survive any succession of any Depositary, Registrar or Depositary's Agent, the termination of this Deposit Agreement, and the conversion of all the Convertible Preferred Stock.

The Depositary, any Depositary's Agent and the Registrar shall be authorized and protected and shall incur no liability for, or in respect of any action taken, suffered or omitted by it in connection with its acceptance and administration of this Deposit Agreement and the exercise and performance of their duties hereunder, in reliance upon any Receipt, Depositary Share, or certificate for the Convertible Preferred Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in this Section 5.03.

The Depositary, any Depositary's Agent and the Registrar may consult with legal counsel (who may be legal counsel for the Company or an employee of the Depositary), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Depositary, any Depositary's Agent and the Registrar and the Depositary, any Depositary's Agent and the Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it and in accordance with such advice or opinion.

Whenever in the performance of its duties under this Deposit Agreement the Depositary, any Depositary's Agent or the Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter may be deemed to be conclusively proved and established by a certificate signed by any one of the President, any Vice President, the Treasurer or

the Secretary of the Company and delivered to the Depositary, any Depositary's Agent or the Registrar, as the case may be; and such certificate shall be full and complete authorization and protection to the Depositary, any Depositary's Agent and the Registrar and the Depositary, any Depositary's Agent or the Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate.

The Depositary, any Depositary's Agent or the Registrar shall not have any liability for or be under any responsibility in respect of the validity of this Deposit Agreement or the execution and delivery hereof (except the due execution hereof by the Depositary) or in respect of the validity or execution of any Convertible Preferred Stock, Depositary Share or Receipt; nor shall the Depositary, any Depositary's Agent or the Registrar be responsible for any breach by the Company of any covenant or condition contained in this Deposit Agreement; nor shall the Depositary, any Depositary's Agent or the Registrar by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Convertible Preferred Stock, Depositary Share, Common Stock or Receipt to be issued pursuant to this Deposit Agreement or as to whether any Convertible Preferred Stock, Depositary Share, Common Stock or Receipt will, when issued, be validly authorized and issued, fully paid and nonassessable.

The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Depositary, any Depositary's Agent or the Registrar for the carrying out or performing by the Depositary, any Depositary's Agent or the Registrar of the provisions of this Deposit Agreement.

The Depositary, any Depositary's Agent and the Registrar are hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the President, any Vice President, the Treasurer or the Secretary of the Company and from any holder of Receipts, and to apply to such officers or holder for advice or instructions in connection with its duties, and such instructions shall be full authorization and protection to the Depositary, any Depositary's Agent and the Registrar and the Depositary, any Depositary's Agent and the Registrar shall not be liable for or in respect of any action taken, suffered or omitted by it in accordance with instructions of any such officer or holder or for any delay in acting while waiting for those instructions. The Depositary, any Depositary's Agent and the Registrar shall be fully authorized and protected in relying upon the most recent instructions received by any such officer or holder.

The Depositary, any Depositary's Agent and the Registrar and any stockholder, affiliate, director, officer or employee of the Depositary, any Depositary's Agent and the Registrar may buy, sell or deal in any of the securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though the Depositary, any Depositary's Agent or the Registrar were not Depositary, and the Registrar under this Deposit Agreement. Nothing herein shall preclude the Depositary, any Depositary's Agent or the Registrar or any such stockholder, affiliate, director, officer or employee from acting in any other capacity for the Company or for any other Person.

No provision of this Deposit Agreement shall require the Depositary or the Registrar 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 its rights if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

None of the Depositary, any Depositary's Agent, the Registrar or the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Convertible Preferred Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

None of the Depositary, any Depositary's Agent, any Registrar or the Company shall be liable for any action or any failure to act by it in good faith reliance upon the written advice of legal counsel or accountants, or information from any Person presenting Convertible Preferred Stock for deposit, any holder of a Receipt or any other Person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, the Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction, instruction, order or other document believed by it to in good faith be genuine and to have been signed or presented by the proper party or parties.

The Depositary undertakes, and the Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or the Registrar.

The Depositary, the Depositary's Agents, and any Registrar may own and deal in any class of securities of the Company and its affiliates and in Receipts. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates.

Notwithstanding anything to the contrary contained in this Deposit Agreement or the Authorizing Resolutions, the Company shall determine and instruct the Depositary in writing as to (i) the conversion rate in respect of the Convertible Preferred Stock, (ii) the number of shares of Class A Common Stock to be issued and delivered upon conversion of any Convertible Preferred Stock surrendered for conversion, (iii) the amount of immediately available funds to be delivered to a holder of Depositary Shares in lieu of fractional shares of Common Stock, and (iv) the kind and amount of securities, cash and other property receivable for the holder of the Receipt surrendered for conversion of Class A Common Stock, and the Depositary may rely conclusively on any such determination by the Company, and shall have no duty or obligation to investigate or inquire as to whether any such determination by the Company is correct or whether any such determination was made in compliance with the terms and conditions of the Authorization Resolution . The Depositary shall be deemed to have no knowledge of any such information unless and until it shall have actually received written notice thereof. The Depositary shall have no duty or obligation to investigate or inquire as to whether any actions taken by the Company or any holder of Receipts comply with the terms and conditions of the Authorizing Resolutions.

SECTION 5.04. *Resignation and Removal of the Depositary; Appointment of Successor Depositary.* The Depositary may at any time resign as Depositary hereunder by notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall use its best efforts to, within 30 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be a Person having its principal office in the United States of America and having a combined capital and surplus of at least $50,000,000. If no successor Depositary shall have been so appointed and have accepted appointment within 30 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Convertible Preferred Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any Person into or with which the Depositary may be merged, consolidated or converted shall be the successor of such Depositary without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

SECTION 5.05. *Corporate Notices and Reports.* The Company agrees that it will transmit to the record holders of Receipts, in each case at the addresses furnished to it pursuant to Section 4.08, all notices and reports (including without limitation financial statements) required by law, by the rules of any national securities exchange upon which the Convertible Preferred Stock, the Depositary Shares or the Receipts are listed or by the Company's Restated Certificate of Incorporation (including the Authorizing Resolutions) to be furnished by the Company to holders of Convertible Preferred Stock. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request for such purpose. In addition, the Depositary will transmit to the holders of Depositary Shares (at Company expense) such other documents as may be requested by the Company. The Company further agrees that it will promptly notify the Depositary

in writing of any change in the conversion rate and conversion price in respect of the Convertible Preferred Stock.

SECTION 5.06. *Indemnification by the Company.* The Company shall indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the costs and expenses of defending itself and reasonable counsel fees) which may arise out of (a) any action taken, suffered or omitted (i) by the Depositary the Registrar or any of their respective agents (including any Depositary's Agent) in connection with the acceptance, administration, exercise and performance of their duties under or in connection with this Deposit Agreement and the Receipts, except for any such loss or liability arising out of the gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such Person or Persons, or (ii) by the Company or any of its agents, or (b) the offer, sale or registration of the Receipts, the Depositary Shares or the Convertible Preferred Stock pursuant to the provisions hereof. The obligations of the Company set forth in this Section 5.06 shall survive any succession of any Depositary, Registrar or Depositary's Agent, the termination of this Deposit Agreement, and the conversion of all the Convertible Preferred Stock.

SECTION 5.07. *Charges and Expenses*. The Company agrees to pay to the Depositary, any Depositary's Agent and the Registrar their reasonable compensation as agreed to by the Company and the Depositary, any Depositary's Agent and the Registrar, as the case may be, for all services rendered by it hereunder and, from time to time, on demand of the Depositary, any Depositary's Agent and the Registrar, its reasonable expenses and counsel fees and other disbursements incurred in the preparation, delivery, amendment, administration and execution of this Deposit Agreement and the exercise and performance of their duties hereunder. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements hereunder. The Company shall pay all charges of the Depositary in connection with the initial deposit of the Convertible Preferred Stock and the initial issuance of the Depositary Shares, redemption of the Convertible Preferred Stock at the option of the Company and all withdrawals of shares of the Convertible Preferred Stock by owners of Depositary Shares. All other charges and expenses of the Depositary and any Depositary's Agent hereunder and of the Registrar (including, in each case, reasonable fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present its statement for charges and expenses to the Company once every months or at such other intervals as the Company and the Depositary may agree. All other transfer and other taxes and governmental charges shall be at the expense of holders of Depositary Shares. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses.

SECTION 5.08. *Tax Compliance.* (a) The Depositary, on its own behalf and on behalf of the Company, will comply with all applicable certification, information reporting and withholding (including "backup" withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any payments made with respect to the

Depositary Shares or (ii) the issuance, delivery, holding, transfer, redemption or exercise of rights under the Receipts or the Depositary Shares. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent.

(b) The Depositary shall comply with any direction received from the Company with respect to the application of such requirements to particular payments or holders or in other particular circumstances, and may for purposes of this Deposit Agreement rely on any such direction in accordance with the provisions of Section 5.03 hereof.

(c) The Depositary shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available on the reasonable request of the Company or to its authorized representatives.

SECTION 5.09. *Deposit of Convertible Preferred Stock by the Company.* The Company agrees with the Depositary that neither the Company nor any company controlled by the Company will at any time deposit any Convertible Preferred Stock if such Convertible Preferred Stock is required to be registered under the provisions of the Securities Act of 1933 unless a registration statement is in effect as to such Convertible Preferred Stock.

ARTICLE VI

Amendment and Termination

SECTION 6.01. *Amendment.* The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; *provided*, *however*, that no such amendment (other than any change in the fees of any Depositary, Registrar or transfer agent) which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the holders of Receipts evidencing at least 66 2/3% of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective, or any transferee of such holder shall be deemed, by continuing to hold such Receipt, or by reason of the acquisition thereof, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right, subject to the applicable provisions hereof, of any owner of Depositary Shares to withdraw the Convertible Preferred Stock represented by the Depositary Shares or to convert the shares of Convertible Preferred Stock represented thereby into Class A Common Stock, except as provided in the Authorizing Resolutions or in order to comply with mandatory provisions of applicable law. Prior to executing any amendment, the Company shall deliver an Officer's Certificate to the Depositary which states that the proposed amendment is in compliance with the terms of this Section 6.01.

SECTION 6.02. *Termination.* This Agreement may be terminated by the Company or the Depositary only after (i) all outstanding Depositary Shares shall have been converted pursuant to Section 2.03, 2.04, 2.05 or 2.06 or (ii) there shall have been made a final distribution in respect of the Convertible Preferred Stock in connection with any liquidation, dissolution or

winding up of the Company and such distributions shall have been distributed to the holders of Receipts evidencing the Depositary Shares pursuant to Section 4.01 or 4.02, as applicable.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Registrar under Sections 5.06 and 5.07 and the second paragraph of Section 5.03.

SECTION 6.03. *Consents*. Consents of holders of Depositary Shares required by this Article VI may be evidenced by one or more instruments signed by such holder or by his agent duly appointed in writing, and shall be effective when delivered to the Depositary. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Deposit Agreement and conclusive in favor of the Depositary, the Registrar and the Company, if made in the manner herein provided.

The execution of any proxy, consent or other instrument by the holder of Depositary Shares or his agent or proxy shall be revocable, except as otherwise specifically provided, and be deemed sufficient and conclusive for all purposes of this Deposit Agreement if (a) the Depositary, Registrar or Company, as the case may be, shall have mailed or delivered to the holder at his address as shown on the books of the Depositary such proxy, consent or other instrument, (b) the proxy, consent or other instrument shall have been returned to the Depositary, Registrar or Company, as the case may be, bearing a signature purporting and reasonably appearing to be that of the holder, his agent or proxy, and (c) the Person receiving the executed proxy, consent or other instrument shall have no actual knowledge or notice of any irregularity or of any fact or circumstance, which, if substantiated, would impair the validity of such proxy, consent or other instrument. The matters referred to in clauses (a), (b) and (c) above may be evidenced by a certificate of the Depositary, Registrar or Company, as the case may be.

The ownership of Depositary Shares shall be proved by the books of the Depositary or, if a Registrar for Depositary Shares (other than the Depositary) shall have been appointed, the Registrar or by a certificate of the Depositary or Registrar, as applicable.

The Depositary shall not be bound to recognize any Person as a holder unless and until such Person's title to the Depositary Shares held by such Person is proved in the manner provided herein.

Any such consent of the holder of any Depositary Shares shall bind every future holder of the same Depositary Shares including the holder of every Depositary Shares issued upon the registration of transfer thereof or in exchange therefore or in lieu thereof, whether or not notation of such consent is made upon any such Depositary Shares.

ARTICLE VII

Miscellaneous

SECTION 7.01. *Counterparts*. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of

which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.02. *Exclusive Benefit of Parties*. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other Person whatsoever.

SECTION 7.03. *Invalidity of Provisions*. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.04. *Notices*. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or facsimile confirmed by letter, addressed to the Company at 300 Willow Brook Office Park, Fairport, New York 14450, fax (585) 218-3603 to the attention of the General Counsel, or at any other address of which the Company shall have notified the Depositary in writing, with a copy to McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois 60606, fax (312) 984-7700, attention: Bernard Kramer, Esq.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or facsimile confirmed by letter, addressed to the Depositary at the office of the Depositary, at 111 Founders Plaza, 11th Floor, East Hartford, CT 06108, fax 860-528-6472, attention: Relationship Manager, or at any other address of which the Depositary shall have notified the Company and the record holders of the Receipts in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or facsimile confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or facsimile shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company however, may act upon any facsimile message received by it from the other or from any holder of a Receipt, notwithstanding that such facsimile message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. *Depositary's Agents.* The Depositary may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself (through its directors, officers and employees) or by or through its attorneys or agents, and the Depositary shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or any other Person resulting from any such act, default, neglect or misconduct, absent gross negligence or bad faith in the selection

and continued employment thereof (which gross negligence or bad faith must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary will notify the Company of any such action.

SECTION 7.06. *Holders of Receipts Are Parties*. The holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

SECTION 7.07. *Governing Law*. This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the conflict of law provisions thereof.

SECTION 7.08. *Inspection of Deposit Agreement*. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.09. *Headings*. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

CONSTELLATION BRANDS, INC.

By: /S/ THOMAS J. MULLIN

Name: Thomas J. Mullin
Title: Executive Vice President
and General Counsel

MELLON INVESTORS SERVICES LLC, as Depositary

By: /S/ JOHN J. BORYCZKI

Name: John J. Boryczki
Title: Assistant Vice President

EXHIBIT A

FORM OF RECEIPT

Unless this certificate is presented by an authorized representative of The Depositary Trust Company, a New York corporation ("DTC"), to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede and Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede and 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 in as much as the registered owner hereof, Cede and Co., has an interest herein.

NUMBER
DR-A-____

__________ DEPOSITARY SHARES
CUSIP 21036P 30 6

DEPOSITARY RECEIPT FOR DEPOSITARY SHARES,
EACH REPRESENTING 1/40 OF A SHARE OF
5.75% SERIES A MANDATORY CONVERTIBLE PREFERRED STOCK

CONSTELLATION BRANDS, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE.
SEE REVERSE FOR CERTAIN DEFINITIONS.

Mellon Investor Services LLC, a New Jersey limited liability company, as Depositary (the "*Depositary*"), hereby certifies that____________________ ______________________________________ is the registered owner of____ Depositary Shares ("*Depositary Shares*"), each Depositary Share representing 1/40 of one share of 5.75% Series A Mandatory Convertible Preferred Stock (the "*Convertible Preferred Stock*"), of Constellation Brands, Inc., a Delaware corporation (the "*Company*"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of July 30, 2003 (the "*Deposit Agreement*"), by and among the Company, the Depositary and all holders from time to time of the Receipts described therein. Subject to the terms of the Deposit Agreement, each owner of a Depositary Share is entitled proportionately to all of the rights, preferences and privileges of the shares of Convertible Preferred Stock.

By accepting this Receipt the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the Receipts by the manual signature of a duly authorized officer thereof.

This Receipt is continued on the reverse side hereof and the additional provisions therein set forth have the same effect as if set forth at this place.

Dated: ______________________

Countersigned and Registered:

Mellon Investor Services LLC,
as Registrar

By: ____
Name:
Title:

Mellon Investor Services LLC,
as Depositary

By: ____
Name:
Title:

Depositary Receipts, of which this Receipt is one, are made available upon the terms and conditions set forth in the Deposit Agreement. The Deposit Agreement sets forth the rights of the holders of Depositary Shares and the rights and duties of the Depositary. The statements made on the face and the reverse of this Receipt are summaries of certain provisions of the Deposit Agreement and are subject to detailed provisions thereof, to which reference is hereby made.

THE COMPANY WILL FURNISH TO EACH HOLDER OF DEPOSITARY SHARES ON REQUEST AND WITHOUT CHARGE A COPY OF THE DEPOSIT AGREEMENT AND A FULL STATEMENT OF THE DESIGNATIONS AND ANY PREFERENCES, CONVERSIONS AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS, QUALIFICATIONS, AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE COMPANY IS AUTHORIZED TO ISSUE AND, WITH RESPECT TO ANY PREFERRED OR SPECIAL CLASS IN A SERIES, THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT THEY HAVE BEEN SET AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. ANY SUCH REQUEST IS TO BE ADDRESSED TO THE OFFICE OF THE SECRETARY OF THE COMPANY.

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

TEN COM— as tenants in common
TEN ENT— tenants by the entireties
JT TEN— as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT- ______ Custodian ______
(Cust) (Minor)
under Uniform Gifts to Minors Act
______
(State)

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

ASSIGNMENT

For valued received, ______

hereby sells, assigns and transfers this Receipt unto ______.

______
(please insert social security or other identifying number of assignee)

______
(please print or typewrite name and address including postal zip code of assignee)

______ Depositary Shares represented by this Receipt, and do hereby

irrevocably constitute and appoint ______ Attorney to transfer the said Depositary Shares on the books of the named Depositary with full power of substitution in the premesis.

Dated: ______

______
Signature

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Receipt, in every particular, without alteration or enlargement, or any change whatsoever.

SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

EXHIBIT B

RESOLUTIONS

[Included as Exhibit 4.1 to this Form 8-K]