

CONSECO INC

FORM 8-K (Current report filing)

Filed 11/27/96 for the Period Ending 11/27/96

Address	11825 N PENNSYLVANIA ST CARMEL, IN 46032
Telephone	3178176100
CIK	0000719241
SIC Code	6321 - Accident and Health Insurance
Industry	Insurance (Life)
Sector	Financial
Fiscal Year	12/31

CONSECO INC

FORM 8-K

(Unscheduled Material Events)

Filed 11/27/1996 For Period Ending 11/27/1996

Address	11825 N PENNSYLVANIA ST CARMEL, Indiana 46032
Telephone	317-817-6100
CIK	0000719241
Industry	Insurance (Life)
Sector	Financial
Fiscal Year	12/31

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: November 27, 1996

CONSECO, INC.

State of Incorporation:
Indiana

Commission File Number IRS Employer Id. Number
No. 1-9250 No. 35-1468632

Address of Principal Executive Offices:
11825 North Pennsylvania Street
Carmel, Indiana 46032

Telephone No.
(317) 817-6100

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CONSECO, INC. AND SUBSIDIARIES

ITEM 5. OTHER EVENTS.

On November 27, 1996, Consecos, Inc. ("Consecos") announced the closing of the public offering by Consecos Financing Trust II, a subsidiary of Consecos, of 325,000 of 8.70 percent Capital Trust Pass-through Securities SM ("TruPS SM")* of Consecos Financing Trust II at \$1,000 per security. Each TruPS security will pay cumulative cash distributions at the annual rate of 8.70 percent of the stated \$1,000 liquidation amount per security, payable semi-annually commencing May 15, 1997. The TruPS are fully and unconditionally guaranteed as to distributions and other payments by Consecos. Proceeds from the offering of approximately \$321.3 million (after underwriting and other associated costs) will be used to repay bank debt.

* - Salomon Brothers has filed applications with the United States Patent and Trademark Office for the registration of the Capital Trust Pass-through Securities and TruPS service marks.

CONSECO, INC. AND SUBSIDIARIES

ITEM 7(c). EXHIBITS.

- 1.1 Underwriting Agreement for 325,000 Preferred Securities of Consecos Financing Trust II, dated November 22, 1996.
- 1.2 Pricing Agreement for 325,000 Preferred Securities of Consecos Financing Trust II, dated November 22, 1996
- 4.17.1 Second Supplemental Indenture, dated as of November 22, 1996, between Consecos, Inc. and Fleet National Bank, as Trustee.
- 4.17.4 8.70% Subordinated Deferrable Interest Debenture due 2026.
- 4.19.1 Amended and Restated Declaration of Trust of Consecos Financing Trust II, dated as of November 22, 1996, among Consecos, Inc., as sponsor, the Trustees named therein and the holders from time to time of undivided beneficial interests in the assets of Consecos Financing Trust II.
- 4.19.2 Global Certificate for Preferred Security of Consecos Financing Trust II.
- 4.19.3 Preferred Securities Guarantee Agreement, dated as of November 27, 1996, between Consecos, Inc. and Fleet National Bank.
- 5.3 Opinion of Richards, Layton & Finger, P.A.
- 8.0 Opinion of Locke Reynolds Boyd & Weisell as to certain federal income taxation matters.
- 12.2 Pro forma Computation of Ratio of Earnings to Fixed Charges and Preferred Dividends at September 30, 1996.
- 23.9 Consent of Richards, Layton & Finger, P.A.
- 23.10 Consent of Locke Reynolds Boyd & Weisell (included in Exhibit 8).

CONSECO, INC. AND SUBSIDIARIES

SIGNATURE

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

Date: November 27, 1996

CONSECO, INC.

By: /s/ ROLLIN M. DICK

Rollin M. Dick
Executive Vice President
and Chief Financial Officer

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325,000 Preferred Securities

CONSECO FINANCING TRUST II
(a Delaware Trust)

8.70% Capital Trust Pass-through Securities(sm) (TruPS(sm))

(Liquidation Amount of \$1,000 per Security)

UNDERWRITING AGREEMENT

November 22, 1996

Salomon Brothers Inc
Seven World Trade Center
New York, New York 10048

Ladies and Gentlemen:

Conseco Financing Trust II (the "Trust"), a statutory business trust organized under the Business Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. Sections 3801 et seq.), and Conseco, Inc., an Indiana corporation (the "Company" and, together with the Trust, the "Offerors"), confirm their agreement (the "Agreement") with Salomon Brothers Inc ("Salomon Brothers" or the "Underwriter") with respect to the sale by the Trust and the purchase by the Underwriter of 325,000 Preferred Securities of 8.70% Capital Trust Pass-through Securities of the Trust ("Capital Securities"), except as may otherwise be provided in the Pricing Agreement, as hereinafter defined. The Capital Securities will be guaranteed by the Company with respect to distributions and payments upon liquidation, redemption and otherwise (the "Capital Securities Guarantee") pursuant to the Capital Securities Guarantee Agreement (the "Capital Securities Guarantee Agreement"), dated as of November 27, 1996, between the Company and Fleet National Bank, as trustee (the "Guarantee Trustee"), and in certain circumstances described in the Prospectus, the Trust will distribute Subordinated Debentures (as defined herein) to holders of Capital Securities. The 325,000

(sm) Salomon Brothers Inc has filed applications with the United States Patent and Trademark Office for the registration of the TruPS service mark.

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Capital Securities to be purchased by the Underwriter, together with the related Capital Securities Guarantee and the Subordinated Debentures, are collectively referred to herein as the "Securities".

Prior to the purchase and public offering of the Capital Securities by the Underwriter, the Offerors and the Underwriter, shall enter into an agreement substantially in the form of Exhibit A hereto (the "Pricing Agreement"). The Pricing Agreement may take the form of an exchange of any standard form of written telecommunication between the Offerors and the Underwriter and shall specify such applicable information as is indicated in Exhibit A hereto. The offering of the Capital Securities will be governed by this Agreement, as supplemented by the Pricing Agreement. From and after the date of the execution and delivery of the Pricing Agreement, this Agreement shall be deemed to incorporate the Pricing Agreement.

The Company, the Trust, Consecro Financing Trust I and Consecro Financing Trust III (collectively, the "Consecro Trusts") have filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. 333- 14991) and pre-effective amendment nos. 1 and 2 thereto covering the registration of securities of the Company and the Consecro Trusts, including the Securities, under the Securities Act of 1933, as amended (the "1933 Act"), including the related preliminary prospectus or prospectuses, and the offering thereof from time to time in accordance with Rule 415 of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations") and the Company has filed such post-effective amendments thereto as may be required prior to the execution of the Pricing Agreement. Such registration statement, as so amended, has been declared effective by the Commission. Such registration statement, as so amended, including the exhibits and schedules thereto, if any, and the information, if any, deemed to be a part thereof pursuant to Rule 430A(b) of the 1933 Act Regulations (the "Rule 430A Information") or Rule 434(d) of the 1933 Act Regulations (the "Rule 434 Information"), is referred to herein as the "Registration Statement"; and the final prospectus and the prospectus supplement relating to the offering of the Securities, in the form first furnished to the Underwriter by the Company for use in connection with the offering of the Securities, are collectively referred to herein as the "Prospectus"; provided, however, that all references to the "Registration Statement" and the "Prospectus" shall be deemed to include all documents incorporated therein by reference pursuant to the Securities Exchange Act of 1934, as amended (the "1934 Act"), prior to the execution of the applicable Pricing Agreement; provided, further, that if the Offerors file a registration statement with the Commission pursuant to

Section 462(b) of the 1933 Act Regulations (the "Rule 462(b) Registration Statement"), then after such filing, all references to "Registration Statement" shall be deemed to include the Rule 462(b) Registration Statement; and provided, further, that if the Offerors elect to rely upon Rule 434 of the 1933 Act Regulations, then all references to "Prospectus" shall be deemed to include the final or preliminary prospectus and the applicable term sheet or abbreviated term sheet (the "Term Sheet"), as the case may be, in the form first furnished to the Underwriter by the Company in reliance upon Rule 434 of the 1933 Act Regulations, and all references in this Underwriting Agreement to the date of the Prospectus shall mean the date of the Term Sheet. A "preliminary prospectus" shall be deemed to refer to any prospectus used before the registration statement became effective and any prospectus that omitted, as applicable, the Rule 430A Information, the Rule 434 Information or other information to be included upon pricing in a form of prospectus filed with the Commission pursuant to Rule 424(b) of the 1933 Act Regulations, that was used after such effectiveness and prior to the execution and delivery of the applicable Pricing Agreement. For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any Term Sheet or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement, any preliminary prospectus or the Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is incorporated by reference in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be.

The Offerors understand that the Underwriter proposes to make a public offering of the Securities as soon as the Underwriter deems advisable after the Pricing Agreement has been executed and delivered and the Declaration (as defined herein), the Indenture (as defined herein), and the Capital Securities Guarantee Agreement have been qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"). The entire proceeds from the sale of the Capital Securities will be combined with the entire proceeds from the sale by the Trust to the Company of its

common securities (the "Common Securities," and together with the Capital Securities, the "Trust Securities"), as guaranteed by the Company, to the extent set forth in the Prospectus, with respect to distributions and payments upon liquidation and redemption (the "Common Securities Guarantee" and together with the Capital Securities Guarantee, the "Guarantees") pursuant to the Common Securities Guarantee Agreement (the "Common Securities Guarantee Agreement" and, together with the Capital Securities Guarantee Agreement, the "Guarantee Agreements"), dated as of November 27, 1996, between the Company and the Guarantee Trustee, as Trustee, and will be used by the Trust to purchase \$325,000,000 of 8.70% subordinated deferrable interest debentures (the "Subordinated Debentures") issued by the Company. The Capital Securities and the Common Securities will be issued pursuant to the amended and restated declaration of trust of the Trust, dated as of November 22, 1996 (the "Declaration"), among the Company, as Sponsor, Stephen C. Hilbert, Rollin M. Dick and Lawrence W. Inlow (the "Regular Trustees"), Fleet National Bank, as Property Trustee (the "Property Trustee"), and First Union Bank of Delaware (the "Delaware Trustee," and, together with the Property Trustee and the Regular Trustees, the "Trustees"), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Subordinated Debentures will be issued pursuant to an indenture, dated as of November 14, 1996 (the "Base Indenture"), between the Company and Fleet National Bank as trustee (the "Debt Trustee"), as supplemented by the Second Supplemental Indenture dated as of November 22, 1996 (the "Supplemental Indenture," and together with any other amendments or supplements thereto, the "Indenture"), between the Company and the Debt Trustee.

SECTION 1. Representations and Warranties.

(a) The Offerors jointly and severally represent and warrant to the Underwriter as of the date hereof and as of the date of the Pricing Agreement

(such later date being hereinafter referred to as the "Representation Date") that:

(i) No stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been initiated or, to the knowledge and information of the Offerors after due and diligent inquiry, threatened by the Commission.

(ii) The Company and the Conseco Trusts meet, and at the respective times of the commencement and consummation of the Offering of the Securities will meet, the requirements for the use of Form S-3 under the 1933 Act. Each of the Registration Statement and any Rule 462(b) Registration Statement has become effective under the 1933 Act. At the respective times the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendments thereto (including the filing

of the Company's most recent Annual Report on Form 10-K with the Commission) became effective and at each Representation Date, the Registration Statement, any Rule 462 Registration Statement and any amendments and supplements thereto complied and will comply in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations and the 1939 Act and the rules and regulations of the Commission under the 1939 Act (the "1939 Act Regulations") and did not 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. At the date of the Prospectus and at the Closing Time (as defined herein), the Prospectus and any amendments and supplements thereto did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Offerors elect to rely upon Rule 434 of the 1933 Act Regulations, the Offerors will comply with the requirements of Rule 434. Notwithstanding the foregoing, the representations and warranties in this subsection shall not apply to (A) statements in or omissions from the Registration Statement or the Prospectus made in reliance upon and in conformity with information furnished to the Offerors in writing by the Underwriter expressly for use in the Registration Statement or the Prospectus or (B) that part of the Registration Statement which shall constitute the Statement of Eligibility (Form T-1) under the 1939 Act.

Each preliminary prospectus and prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the 1933 Act, complied when so filed in all material respects with the 1933 Act Regulations and, if applicable, each preliminary prospectus and the Prospectus delivered to the Underwriter for use in connection with the offering of Securities will, at the time of such delivery, be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(iii) The documents incorporated or deemed to be incorporated by reference in the Registration Statement or the Prospectus, at the time they were or hereafter are filed or last amended, as the case may be, with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act, and the rules and regulations of the Commission thereunder (the "1934 Act Regulations"), and at the time of filing or as of the time of any subsequent amendment, did 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, in the light of the circumstances under which they were or are made, not misleading; and any additional

documents deemed to be incorporated by reference in the Registration Statement or the Prospectus will, if and when they are filed with the Commission, or when amended, as appropriate, comply in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations 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 after the date hereof; provided, however, that this representation and warranty shall not apply to statements contained in or omitted from the Registration Statement or the Prospectus in reliance upon, and in conformity with, information furnished to the Company in writing by the Underwriter expressly for use in the Registration Statement or the Prospectus.

(iv) Coopers & Lybrand, L.L.P., the accountants who certified the financial statements and supporting schedules of the Company included or incorporated by reference in the Registration Statement, are independent public accountants with respect to the Company and its subsidiaries as required by the 1933 Act and the 1933 Act Regulations.

(v) The financial statements of the Company included or incorporated by reference in the Registration Statement and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations for the periods specified. Except as otherwise stated in the Registration Statement, said financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis. The supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be included therein. The ratios of earnings to fixed charges (including preferred stock dividends) included in the Prospectus have been calculated in compliance, in all material respects, with Item 503(d) of Regulation S-K of the Commission. The selected financial data and the summary financial information included in the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included in the Registration Statement. The pro forma financial statements of the Company and its subsidiaries and the related notes thereto included in the Registration Statement and the Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein.

(vi) The statutory financial statements of each of the Company's insurance subsidiaries, from which certain ratios and other statistical data contained in the Registration Statement have been derived, have for each relevant period been prepared in accordance with accounting practices prescribed or permitted by the National Association of Insurance Commissioners, and with respect to each insurance subsidiary, the appropriate Insurance Department of the state of domicile of such insurance subsidiary, and such accounting practices have been applied on a consistent basis throughout the periods involved, except as disclosed therein.

(vii) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, and except as otherwise stated or contemplated therein, (A) there has been no material adverse change and no development which would reasonably be expected to result in a material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries, considered as one enterprise, whether or not arising in the ordinary course of business, or American Travellers Corporation ("American Travellers"), Capitol American Financial Corporation ("Capitol American") and Transport Holdings Inc. ("Transport Holdings") (each, an "Acquired Company" and collectively, the "Acquired Companies") and their respective subsidiaries, in each case, considered as one enterprise, (B) there have been no transactions entered into by the Company or any of its subsidiaries which are material to the Company and its subsidiaries, considered as one enterprise, or any of the Acquired Companies or their respective subsidiaries, in each case, considered as one enterprise, other than those entered into in the ordinary course of business, and (C) except for regular quarterly dividends, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock or by any of the Acquired Companies on any class of their capital stock.

(viii) The Company has been duly incorporated and is validly existing as a corporation under the laws of the State of Indiana, with corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Prospectus or in the Company's Annual Report filed on Form 10-K for the year ended December 31, 1995; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings

or business affairs of the Company and its subsidiaries, considered as one enterprise.

(ix) Each of the subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Prospectus or in the Company's Annual Report filed on Form 10-K for the year ended December 31, 1995; and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Company and its subsidiaries, considered as one enterprise; and the outstanding shares of capital stock of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and nonassessable and, except as described in the Prospectus, all such shares are owned by the Company or by a subsidiary of the Company.

(x) The Company and each of its subsidiaries hold all material licenses, certificates and permits from governmental authorities (including, without limitation, insurance licenses from the insurance departments of the various states where the subsidiaries write insurance business (the "Insurance Licenses")) which are necessary to the conduct of their businesses; the Company and its subsidiaries have fulfilled and performed all material obligations necessary to maintain their respective Insurance Licenses, and no event or events have occurred which could reasonably be expected to result in the impairment, modification, termination or revocation of such Insurance Licenses.

(xi) The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus; since the date indicated in the Prospectus there has been no change in the consolidated capitalization of the Company and its subsidiaries (except for subsequent issuances, if any, pursuant to stock option agreements or employee benefit plans); and all of the issued and outstanding capital stock of the Company has been duly authorized and validly issued, is fully paid and nonassessable and conforms to the descriptions thereof contained in the Prospectus and the Registration Statement.

(xii) The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Act with the power and authority to own property and to conduct

its business as described in the Registration Statement and Prospectus and to enter into and perform its obligations under this Agreement, the Pricing Agreement, the Capital Securities, the Common Securities and the Declaration; the Trust is duly qualified to transact business as a foreign company and is in good standing in each jurisdiction in which such qualification is necessary, except where the failure to so qualify or be in good standing would not have a material adverse effect on the Trust; the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus; the Trust is and will, under current law, be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation.

(xiii) The Common Securities have been duly authorized by the Declaration and, when issued and delivered by the Trust to the Company against payment therefor as described in the Registration Statement and Prospectus, will be validly issued and will represent undivided beneficial interests in the assets of the Trust and will conform in all material respects to the description thereof contained in the Prospectus; the issuance of the Common Securities is not subject to preemptive or other similar rights; and at the Closing Time all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equitable right.

(xiv) This Agreement and the Pricing Agreement have been duly authorized, executed and delivered by each of the Offerors.

(xv) The Declaration has been duly authorized by the Company and, at the Closing Time, will have been duly executed and delivered by the Company and the Trustees, and assuming due authorization, execution and delivery of the Declaration by the Property Trustee and the Delaware Trustee, the Declaration will, at the Closing Time, be a valid and binding obligation of the Company and the Regular Trustees, enforceable against the Company and the Regular Trustees in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity) (the "Bankruptcy Exceptions") and will conform in all material respects to the description thereof contained in the Prospectus.

(xvi) Each of the Guarantee Agreements has been duly authorized by the Company and, when validly executed and delivered by the Company, and, in the case of the Capital Securities Guarantee Agreement, assuming due authorization,

execution and delivery of the Capital Securities Guarantee by the Guarantee Trustee, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions, and each of the Guarantees and the Guarantee Agreements will conform in all material respects to the description thereof contained in the Prospectus.

(xvii) The Capital Securities have been duly authorized for issuance and sale to the Underwriter and, when issued and delivered against payment therefor as provided herein, will be validly issued and fully paid and non-assessable undivided beneficial interests in the assets of the Trust and will conform in all material respects to the description thereof contained in the Prospectus; the issuance of the Capital Securities is not subject to preemptive or other similar rights.

(xviii) The Indenture has been duly authorized and qualified under the 1939 Act and, at the Closing Time, will have been duly executed and delivered and will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions; the Indenture will conform in all material respects to the description thereof contained in the Prospectus.

(xix) The Subordinated Debentures have been duly authorized by the Company and, at the Closing Time, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment therefor as described in the Prospectus, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions, and will be in the form contemplated by, and entitled to the benefits of, the Indenture and will conform in all material respects to the description thereof in the Prospectus.

(xx) Each of the Regular Trustees of the Trust is an employee of the Company and has been duly authorized by the Company to execute and deliver the Declaration.

(xxi) Each of (A) the Agreement and Plan of Merger, dated as of August 25, 1996 (the "American Travellers Merger Agreement"), by and between the Company and American Travellers, (B) the Agreement and Plan of Merger, dated as of August 25, 1996 (the "Capitol American Merger Agreement"), by and among the Company, CAF Acquisition Company ("CAF") and Capitol American, and (C) the Agreement and Plan of Merger, dated as September 25, 1996 (the "Transport Holdings Merger Agreement" and together with

the American Travellers Merger Agreement and the Capitol American Merger Agreement, the "Merger Agreements") by and between the Company and Transport Holdings, has been duly authorized, executed and delivered by the Company and, in the case of the Capitol American Merger Agreement, CAF and constitute valid and binding obligations of the Company and, in the case of the Capitol American Merger Agreement, CAF enforceable against the Company and, in the case of the Capitol American Merger Agreement, CAF in accordance with their terms, except as enforcement thereof may be limited by the Bankruptcy Exceptions, and neither the Company nor CAF, nor, to the knowledge and information of the Company after due and diligent inquiry, any of the Acquired Companies is in default in the observance of the terms and conditions thereof.

(xxii) Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any material contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its subsidiaries is subject, or in violation of any applicable law, administrative regulation or administrative or court order or decree, which violation or default would, singly or in the aggregate, reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Company and its subsidiaries, considered as one enterprise; the Trust is not in violation of the Declaration or its certificate of trust filed with the State of Delaware on October 28, 1996 (the "Certificate of Trust"); the execution, delivery and performance of this Agreement, the Pricing Agreement, the Declaration, the Capital Securities, the Common Securities, the Indenture, the Subordinated Debentures, the Guarantee Agreements and the Guarantees and the consummation of the transactions contemplated herein and therein, and compliance by the Offerors with their respective obligations hereunder and thereunder will not conflict with or constitute a breach of, or a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust, the Company or any of its subsidiaries pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Trust, the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Trust, the Company or any of its subsidiaries is subject, except for a conflict, breach, default, lien, charge or encumbrance which would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Company and its subsidiaries

considered as one enterprise, nor will such action result in any violation of the provisions of the Certificate of Trust, the charter or by-laws of the Company or any of its subsidiaries or any applicable law, administrative regulation or administrative or court decree.

(xxiii) There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign (including, without limitation, any proceeding to revoke or deny renewal of any Insurance Licenses), now pending, or, to the knowledge and information of the Company after due and diligent inquiry, threatened, against or affecting the Company or any of its subsidiaries or any of the Acquired Companies or any of their respective subsidiaries which is required to be disclosed in the Registration Statement or the Prospectus, or which is reasonably likely to result in any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company and its subsidiaries, considered as one enterprise, or any of the Acquired Companies and their respective subsidiaries, in each case, considered as one enterprise, or which could be reasonably likely to materially and adversely affect a material portion of the properties or assets thereof or which is reasonably likely to materially and adversely affect the consummation of this Agreement, the Pricing Agreement, the Guarantee Agreements, the Indenture or the transactions contemplated herein or therein; all pending legal or governmental proceedings to which the Company or any of its subsidiaries or any of the Acquired Companies or their respective subsidiaries is a party or of which any of their respective property or assets is the subject which are not described in the Registration Statement or the Prospectus, including ordinary routine litigation incidental to the business of the Company or any of its subsidiaries, or any of the Acquired Companies or their respective subsidiaries, are, considered in the aggregate, not material; and there are no contracts or documents of the Company or any of its subsidiaries or any of the Acquired Companies or their respective subsidiaries which are required to be filed as exhibits to the Registration Statement, or to be incorporated by reference therein, by the 1933 Act, the 1933 Act Regulations, the 1934 Act or the 1934 Act Regulations, which have not been so filed or incorporated by reference.

(xxiv) No authorization, approval or consent of any court or governmental authority or agency is necessary in connection with the issuance and sale of the Common Securities or the offering, issuance and sale of the Capital Securities, the Subordinated Debentures or the Guarantees hereunder, or the consummation by the Offerors of any other transactions contemplated hereby, except such as have been obtained and made under the federal securities laws or state insurance laws and such as may be required under state or foreign securities laws.

(xxv) The Securities conform in all material respects to the statements relating therein contained in the Prospectus and the Registration Statement.

(xxvi) There are no holders of securities of the Company with currently exercisable registration rights to have any securities registered as part of the Registration Statement or included in the offering contemplated by this Agreement.

(xxvii) No order preventing or suspending the use of any preliminary prospectus with respect to the Securities has been issued and no proceedings for that purpose are pending, threatened, or, to the knowledge and information of the Offerors after due and diligent inquiry, contemplated by the Commission; to the knowledge and information of the Offerors after due and diligent inquiry, no order suspending the offering of the Securities in any jurisdiction designated by the Underwriter pursuant to Section 3(f) of this Agreement has been issued and, to the knowledge and information of the Offerors after due and diligent inquiry, no proceedings for that purpose have been instituted or threatened or are contemplated, and any request of the Commission for additional information (to be included in the Registration Statement or Prospectus or otherwise) has been complied with.

(xxviii) Each of the Offerors has full power and authority to execute, deliver and perform its obligations under this Agreement, the Pricing Agreement, the Declaration, the Guarantee Agreements and the Indenture and the Offerors have full corporate power and authority to issue, sell and deliver the Securities.

(xxix) The Offerors have not taken, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in manipulation of the price of the Securities or any of the capital stock of the Company.

(xxx) None of the Trust or the Company or any of its subsidiaries is, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus will not be, an "investment company" or an entity "controlled" by an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended (the "1940 Act").

(xxxi) The Company is in compliance with all provisions of Section 1 of the Laws of Florida, Chapter 92-198, An Act Relating to Disclosure of Doing Business with Cuba.

(xxxii) No "forward looking statement" (as defined in Rule 175 under the 1933 Act) contained in the Registration

Statement, any preliminary prospectus or the Prospectus was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) The Offerors jointly and severally represent and warrant to the Underwriter as of the date hereof and as of the date of the Representation Date, with respect to each of the Acquired Companies that:

(i) Such Acquired Company meets, and at the respective times of the commencement and consummation of the Offering of the Securities will meet, the requirements for the use of Form S-3 under the 1933 Act.

(ii) With respect to such Acquired Company, the documents incorporated or deemed to be incorporated by reference in the Registration Statement or the Prospectus, at the time they were or hereafter are filed or last amended, as the case may be, with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act, and the 1934 Act Regulations, and at the time of filing or as of the time of any subsequent amendment, did 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, in the light of the circumstances under which they were or are made, not misleading; and, with respect to such Acquired Company, any additional documents deemed to be incorporated by reference in the Registration Statement or the Prospectus will, if and when they are filed with the Commission, or when amended, as appropriate, comply in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations 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 after the date hereof.

(iii) The accountants who certified the financial statements and supporting schedules of such Acquired Company included or incorporated by reference in the Registration Statement, are independent public accountants with respect to the Company and its subsidiaries as required by the 1933 Act and the 1933 Act Regulations.

(iv) The financial statements of such Acquired Company included or incorporated by reference in the Registration Statement and the Prospectus, together with the related schedules and notes, present fairly the financial position of such Acquired Company and its subsidiaries as of the dates indicated and the results of their operations for the periods specified. Except as otherwise stated in the Registration Statement, said financial statements have been prepared in conformity with generally

accepted accounting principles applied on a consistent basis. The supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be included therein. The selected financial data and the summary financial information included in the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included in the Registration Statement.

(v) The statutory financial statements of each of such Acquired Company's insurance subsidiaries, from which certain ratios and other statistical data contained in the Registration Statement have been derived, have for each relevant period been prepared in accordance with accounting practices prescribed or permitted by the National Association of Insurance Commissioners, and with respect to each insurance subsidiary, the appropriate Insurance Department of the state of domicile of such insurance subsidiary, and such accounting practices have been applied on a consistent basis throughout the periods involved, except as disclosed therein.

(vi) With respect to such Acquired Company, since the respective dates as of which information is given in the Registration Statement and the Prospectus, and except as otherwise stated or contemplated therein, (A) there has been no material adverse change and no development which would reasonably be expected to result in a material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of such Acquired Company and its subsidiaries, considered as one enterprise, (B) there have been no transactions entered into by such Acquired Company or any of its subsidiaries which are material to such Acquired Company and its subsidiaries, considered as one enterprise, other than those entered into in the ordinary course of business, and (C) except for regular quarterly dividends, there has been no dividend or distribution of any kind declared, paid or made by such Acquired Company on any class of its capital stock.

(vii) Such Acquired Company has been duly incorporated and is validly existing as a corporation under the laws of the State of its incorporation, with corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Prospectus or in such Acquired Company's Annual Report filed on Form 10-K for the year ended December 31, 1995; and such Acquired Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition,

financial or otherwise, or the earnings or business affairs of such Acquired Company and its subsidiaries, considered as one enterprise.

(viii) Such Acquired Company and each of its subsidiaries hold all material licenses, certificates and permits from governmental authorities (including, without limitation, Insurance Licenses) which are necessary to the conduct of their businesses; such Acquired Company and its subsidiaries have fulfilled and performed all material obligations necessary to maintain their respective Insurance Licenses, and no event or events have occurred which could reasonably be expected to result in the impairment, modification, termination or revocation of such Insurance Licenses.

(ix) The authorized, issued and outstanding capital stock of such Acquired Company is as set forth in the Prospectus; since the date indicated in the Prospectus there has been no change in the consolidated capitalization of such Acquired Company and its subsidiaries (except for subsequent issuances, if any, pursuant to stock option agreements or employee benefit plans); and all of the issued and outstanding capital stock of such Acquired Company has been duly authorized and validly issued, is fully paid and nonassessable and conforms to the descriptions thereof contained in the Prospectus and the Registration Statement.

(x) The Merger Agreement between such Acquired Company and the Company has been duly authorized, executed and delivered by such Acquired Company, constitutes a valid and binding obligation of such Acquired Company, enforceable against such Acquired Company in accordance with its terms except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions, and such Acquired Company is not in default in the observance of the terms and conditions thereof.

(xi) There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign (including, without limitation, any proceeding to revoke or deny renewal of any Insurance Licenses), now pending, or, to the knowledge and information of such Acquired Company after due and diligent inquiry, threatened, against or affecting such Acquired Company which is required to be disclosed in the Registration Statement or the Prospectus, or which is reasonably likely to result in any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of such Acquired Company and its subsidiaries, considered as one enterprise, or which could be reasonably likely to materially and adversely affect a material portion of the properties or assets thereof.

(c) Any certificate signed by any officer of the Company, any of the Acquired Companies or a Trustee of the Trust and delivered to the Underwriter or to counsel for the Underwriter shall be deemed a representation and warranty by the Company or the Trust, as the case may be, to the Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriter; Closing.

(a) On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Trust agrees to sell to the Underwriter and the Underwriter agrees to purchase from the Trust, at the price per security set forth in the Pricing Agreement, 325,000 Capital Securities.

(1) If the Offerors have elected not to rely upon Rule 430A of the 1933 Act Regulations, the initial public offering price per Security and the purchase price per Security to be paid by the Underwriter for the Securities have each been determined and set forth in the Pricing Agreement, dated the date hereof, and any necessary amendments to the Registration Statement and the Prospectus will be filed before the Registration Statement becomes effective.

(2) If the Offerors have elected to rely upon Rule 430A of the 1933 Act Regulations, the purchase price per Security to be paid by the Underwriter shall be an amount equal to the initial public offering price per Capital Security, less an amount per Capital Security to be determined by agreement between the Underwriter and the Offerors. The initial public offering price per Capital Security shall be a fixed price to be determined by agreement between the Underwriter and the Offerors. The initial public offering price and the purchase price, when so determined, shall be set forth in the Pricing Agreement. In the event that such prices have not been agreed upon and the Pricing Agreement has not been executed and delivered by all parties thereto by the close of business on the fourth business day following the date of this Agreement, this Agreement shall terminate forthwith, without liability of any party to any other party, unless otherwise agreed to by the Offerors and the Underwriter.

(b) Delivery of certificates for the Securities shall be made at the offices of Salomon Brothers in New York, and payment of the purchase price for the Securities shall be made at the offices of LeBoeuf, Lamb, Greene & MacRae, L.L.P., 125 West 55th Street, New York, New York 10019 or at such other place as shall be agreed upon by the Underwriter and the Offerors, at 10:00 a.m. (New York time) on the third business day after the date the Registration Statement becomes effective (or, if the Offerors

have elected to rely upon Rule 430A, the third full business day after execution of the Pricing Agreement (or, if pricing of the Securities occurs after 4:30

p.m. Eastern time, on the fourth full business day thereafter)), or such other time not later than ten business days after such date as shall be agreed upon by the Underwriter and the Offerors (such time and date of payment and delivery being herein called the "Closing Time").

Payment for the Capital Securities purchased by the Underwriter shall be made to the Trust by wire transfer of immediately available funds, payable to the order of the Trust, against delivery to the respective accounts of the Underwriter of certificates for the Capital Securities to be purchased by it. Certificates for the Capital Securities shall be in such denominations and registered in such names as the Underwriter may request in writing at least two full business days before the Closing Time. The certificates for the Capital Securities will be made available for examination and packaging by the Underwriter no later than 10:00 a.m. (New York City time) on the last business day prior to the Closing Time.

SECTION 3. Covenants of the Offerors. The Offerors agree with the Underwriter as follows:

(a) Promptly following the execution of this Agreement, the Offerors will cause the Prospectus, including as a part thereof a prospectus supplement relating to the Securities to be filed with the Commission pursuant to Rule 424 of the 1933 Act Regulations and the Offerors will promptly advise the Underwriter when such filing has been made. Prior to the filing, the Offerors will cooperate with the Underwriter in the preparation of such prospectus supplement to assure that the Underwriter has no reasonable objection to the form or content thereof when filed or mailed.

(b) The Offerors, subject to Section 3(b), will comply with the requirements of Rule 430A of the 1933 Act Regulations and/or Rule 434 of the 1933 Act Regulations if and as applicable, and will notify the Underwriter immediately, and confirm the notice in writing, (i) of the effectiveness of any post-effective amendment to the Registration Statement or the filing of any supplement or amendment to the Prospectus, (ii) the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose and (v) of the issuance by any state securities commission or other regulatory authority of any order suspending the qualification or the exemption from qualification of the Securities under state securities or Blue Sky laws or the initiation or threatening of

any proceeding for such purpose. The Offerors will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(c) The Company will give the Underwriter notice of its intention to file or prepare any amendment to the Registration Statement (including any post-effective amendment and any filing under Rule 462(b) of the 1933 Act Regulations), any Term Sheet or any amendment, supplement or revision to either the prospectus included in the Registration Statement at the time it became effective or to the Prospectus, whether pursuant to the 1933 Act, the 1934 Act or otherwise; will furnish the Underwriter with copies of any such Rule 462(b) Registration Statement, Term Sheet, amendment, supplement or revision a reasonable amount of time prior to such proposed filing or use, as the case may be; and will not file any such Rule 462(b) Registration Statement, Term Sheet, amendment, supplement or revision to which the Underwriter or counsel for the Underwriter shall object.

(d) The Company will deliver to the Underwriter and counsel for the Underwriter, without charge, signed copies of the Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts. If applicable, the copies of the Registration Statement and each amendment thereto furnished to the Underwriter will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) The Company will deliver to the Underwriter, without charge, as many copies of each preliminary prospectus as the Underwriter may reasonably request, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to the Underwriter, without charge, during the period when the Prospectus is required to be delivered under the 1933 Act or the 1934 Act, such number of copies of the Prospectus (as amended or supplemented) as the Underwriter may reasonably request. If applicable, the Prospectus and any amendments or supplements thereto furnished to the Underwriter will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(f) The Offerors will comply with the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the

Registration Statement and the Prospectus. If at any time when the Prospectus is required by the 1933 Act or the 1934 Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the reasonable opinion of counsel for the Underwriter or for the Offerors, to amend the Registration Statement in order that the Registration Statement 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 or to amend or supplement the Prospectus in order that the Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the reasonable opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Offerors will promptly prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Offerors will furnish to the Underwriter, without charge, such number of copies of such amendment or supplement as the Underwriter may reasonably request.

(g) The Offerors will use their best efforts, in cooperation with the Underwriter, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Underwriter may designate; provided, however, that the Company shall not be obligated to qualify as a foreign corporation in any jurisdiction in which it is not so qualified or subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Securities have been so qualified, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification in effect for so long as may be required in connection with distribution of the Securities.

(h) The Company will make generally available to its securityholders as soon as practicable, but not later than 45 days (or 90 days, in the case of a period that is also the Company's fiscal year) after the close of the period covered thereby, an earnings statement of the Company (in form complying with the provisions of Rule 158 of the 1933 Act Regulations) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the "effective

date" (as defined in said Rule 158) of the Registration Statement.

(i) The Trust will use the net proceeds received by it from the sale of the Securities in the manner specified in the Prospectus under "Use of Proceeds".

(j) If, at the time that the Registration Statement became (or in the case of a post-effective amendment becomes) effective, any information shall have been omitted therefrom in reliance upon Rule 430A or Rule 434 of the 1933 Act Regulations, then immediately following the execution of the Pricing Agreement, the Company will prepare, and file or transmit for filing with the Commission in accordance with such Rule 430A or Rule 434 and Rule 424(b) of the 1933 Act Regulations, copies of an amended Prospectus, or Term Sheet, or, if required by such Rule 430A, a post-effective amendment to the Registration Statement (including an amended Prospectus), containing all information so omitted.

(k) If Offerors elect to rely upon Rule 462(b), the Offerors shall both file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) and pay the applicable fees in accordance with Rule 111 of the 1933 Act Regulations by the earlier of (i) 10:00 p.m. Eastern time on the date of the Pricing Agreement and (ii) the time confirmations are sent or given, as specified by Rule 462(b)(2).

(l) The Company, during the period when the Prospectus is required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

(m) During a period of 90 days from the date of the Pricing Agreement, neither the Trust nor the Company will, without the prior written consent of the Underwriter, directly or indirectly, sell, offer to sell, grant any option for the sale of, or otherwise dispose of, or enter into any agreement to sell, any Capital Securities, any security convertible into or exchangeable or exercisable for Capital Securities, or the Subordinated Debentures or any debt securities substantially similar to the Subordinated Debentures or any equity securities substantially similar to the Capital Securities (except the Subordinated Debentures and the Capital Securities issued pursuant to this Agreement).

(n) During a period of one year from the Closing Time, to make generally available to the Underwriter copies of all reports and other communications (financial or other) mailed to stockholders, and to deliver to the Underwriter promptly after they are available, copies of any reports and financial

statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission).

SECTION 4. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement and the Pricing Agreement, including, without limitation, expenses related to the following, if incurred: (i) the preparation, delivery, printing and filing of the Registration Statement and Prospectus as originally filed (including financial statements and exhibits) and of each amendment thereto, (ii) the printing and delivery to the Underwriter of this Agreement, the Pricing Agreement and such other documents as may be required in connection with offering, purchase, sale and delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Capital Securities, (iv) the fees and disbursements of the Company's counsel, accountants and other advisors or agents (including the transfer agents and registrars) as well as fees and disbursements of the Trustees and any Depositary, and their respective counsel, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(g), including filing fees and the fees and disbursements of counsel for the Underwriter in connection therewith and in connection with the preparation of the Blue Sky Survey and any Legal Investment Survey, (vi) the printing and delivery to the Underwriter of copies of the Registration Statement as originally filed and of each amendment thereto, of each preliminary prospectus, any Term Sheet and of the Prospectus and any amendments or supplements thereto, (vii) the printing and delivery to the Underwriter of copies of the Blue Sky Survey and any Legal Investment Survey, (viii) any fees payable in connection with the rating of the Capital Securities by nationally recognized statistical rating organizations; (ix) the filing fees incident to, and the fees and disbursements of counsel to the Underwriter in connection with, the review, if any, by the National Association of Securities Dealers, Inc. (the "NASD") of the terms of the sale of the Capital Securities; and (x) any fees payable to the Commission.

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If this Agreement is terminated by the Underwriter in accordance with the provisions of Section 5 or Section 9(a)(i) hereof, the Company shall reimburse Salomon Brothers for all of its out-of-pocket expenses, including the reasonable fees and disbursements of LeBoeuf, Lamb, Greene & MacRae, L.L.P., counsel for the Underwriter.

SECTION 5. Conditions of Underwriter's Obligations. The obligations of the Underwriter to purchase and pay for the Capital Securities pursuant to this Agreement are subject to the accuracy of the representations and warranties of the Offerors herein contained or in certificates of any officer of the Company or any subsidiary or the trustees of the Trust delivered pursuant to the provisions hereof, to the performance by the Offerors of their obligations hereunder, and to the following further conditions:

(a) The Registration Statement, including any Rule 462(b) Registration Statement, shall have become effective under the 1933 Act not later than 5:30 p.m., New York City time, on the date hereof, and on the date hereof and at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued under the 1933 Act or proceedings therefor initiated or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the satisfaction of counsel to the Underwriter. A prospectus containing information relating to the description of the Securities, the specific method of distribution and similar matters shall have been filed with the Commission in accordance with Rule 424(b)(1), (2), (3), (4) or (5), as applicable (or any required post-effective amendment providing such information shall have been filed and declared effective in accordance with the requirements of Rule 430A), or, if the Company has elected to rely upon Rule 434 of the 1933 Act Regulations, a Term Sheet including the Rule 434 Information shall have been filed with the Commission in accordance with Rule 424(b)(7).

(b) At the Closing Time the Underwriter shall have received:

(1) The favorable opinion, dated as of the Closing Time, of Lawrence W. Inlow, Executive Vice President, Secretary and General Counsel of the Company, in form and substance satisfactory to counsel for the Underwriter, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation under the laws of the State of Indiana; and the Company has the corporate power and authority under the laws of the State of Indiana and

under its charter to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Registration Statement and the Prospectus or in the Company's Annual Report filed on Form 10-K for the year ended December 31, 1995.

(ii) To the knowledge and information of such counsel after due and diligent inquiry, the Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Company and its subsidiaries, considered as one enterprise.

(iii) The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus (except for subsequent issuances, if any, pursuant to stock option agreements or employee benefit plans), and the shares of issued and outstanding capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable.

(iv) Each subsidiary of the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Registration Statement and the Prospectus or in the Company's Annual Report filed on Form 10-K for the year ended December 31, 1995. Nothing has come to the attention of such counsel to lead such counsel to believe that any subsidiary is not duly qualified as a foreign corporation to transact business or is not in good standing in each jurisdiction in which such qualification is required, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Company and its subsidiaries considered as one enterprise. All of the shares of issued and outstanding capital stock of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and nonassessable, and, except as set forth in the Prospectus, all such shares are owned by the Company or by a subsidiary of the Company.

(v) The forms of certificates used to evidence the Securities comply with all applicable statutory requirements and with any applicable requirements of the Company's Amended Articles of Incorporation and Code of ByLaws.

(vi) The Trust is not required to be qualified and in good standing as a foreign company in Indiana, except to the extent that the failure to so qualify or be in good standing would not have a material adverse effect on the Trust; and the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus.

(vii) The Declaration has been duly authorized, executed and delivered by the Company and the Trustees and is a valid and binding obligation of the Company, enforceable against the Company and each of the Regular Trustees in accordance with its terms, except as enforcement thereof may be limited by the Bankruptcy Exceptions; and the Declaration has been duly qualified under the 1939 Act.

(viii) All legally required proceedings in connection with the authorization, issuance and validity of the Securities and the sale of the Securities in accordance with this Agreement (other than the filing of post-issuance reports, the non-filing of which would not render the Securities invalid) have been taken and all legally required orders, consents or other authorizations or approvals of any other public boards or bodies in connection with the authorization, issuance and validity of the Securities and the sale of the Securities in accordance with this Agreement (other than in connection with or in compliance with the provisions of the securities or Blue Sky laws of any jurisdictions, as to which no opinion need be expressed) have been obtained and are in full force and effect.

(ix) The Registration Statement, including any Rule 462(b) Registration Statement, is effective under the 1933 Act; any required filing of the Prospectus pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act or proceedings therefor initiated, or, to such counsel's knowledge and information after due and diligent inquiry, threatened by the Commission.

(x) The Registration Statement, including any Rule 462(b) Registration Statement, each of the incorporated documents and the Prospectus, and each amendment or supplement thereto (other than the financial statements or other financial information or statistical data included

therein and the Statements of Eligibility on Forms T-1 with respect to each of the Property Trustee, the Debt Trustee and the Guarantee Trustee, as to which no opinion need be rendered), as of their respective effective or issue dates, or when amended, as appropriate, complied as to form in all material respects with the requirements of the 1933 Act or the 1934 Act and the Rules and Regulations thereunder; and the Declaration, the Indenture and the Capital Securities Guarantee Agreement filed with the Commission as part of the Registration Statement complied as to form in all material respects with the requirements of the 1939 Act and the 1939 Act Regulations.

(xi) Each of the documents incorporated by reference in the Registration Statement or the Prospectus at the time they were filed or last amended (other than the financial statements or other financial or statistical data included therein, as to which such counsel need express no belief) complied as to form in all material respects with the requirements of the 1934 Act, and the 1934 Act Regulations, as applicable.

(xii) The Company and each of the Consecro Trusts meet the registrant requirements for use of Form S-3 under the 1933 Act Regulations.

(xiii) The Common Securities, the Capital Securities, the Subordinated Debentures, each of the Guarantees, the Declaration, the Indenture and each of the Guarantee Agreements conform in all material respects to the descriptions thereof contained in the Prospectus.

(xiv) The information in the Prospectus under the captions "The Company", "Pending Acquisitions By The Company", "Consecro Financing Trust II", "Risk Factors", "Use of Proceeds", "Capitalization", "Description of the Capital Securities", "Description of the Trust Guarantee", "Description of the Subordinated Debentures" and "Effect of Obligations under the Subordinated Debentures and the Trust Guarantee", to the extent that they involve matters of law, summaries of legal matters, the Company's Charter and bylaws or legal proceedings, or legal conclusions, has been reviewed by such counsel and is correct in all material respects.

(xv) All of the issued and outstanding Common Securities of the Trust are directly owned by the Company free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equitable right.

(xvi) This Agreement and the Pricing Agreement have been duly authorized, executed and delivered by each of the Trust and the Company and constitute valid and binding obligations of the Company and the Trust, enforceable against the Company and the Trust in accordance with their terms, except (1) to the extent that enforcement thereof may be limited by Bankruptcy Exceptions and (2) that no opinion is given as to the enforceability of the indemnity and contribution provisions under this Agreement and the Pricing Agreement.

(xvii) Each of the Guarantee Agreements has been duly authorized, executed and delivered by the Company; the Capital Securities Guarantee Agreement, assuming it is duly authorized, executed, and delivered by the Guarantee Trustee, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by Bankruptcy Exceptions; and the Capital Securities Guarantee Agreement has been duly qualified under the 1939 Act.

(xviii) The Indenture has been duly executed and delivered by the Company and, assuming due authorization, execution, and delivery thereof by the Debt Trustee, is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions; and the Indenture has been duly qualified under the 1939 Act.

(xix) The Subordinated Debentures are in the form contemplated by the Indenture, have been duly authorized, executed and delivered by the Company and, when authenticated by the Debt Trustee in the manner provided for in the Indenture and delivered against payment therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions.

(xx) The issuance and delivery of the Securities, the execution and delivery of this Agreement, the Pricing Agreement, the Declaration, the Capital Securities, the Common Securities, the Indenture, the Subordinated Debentures, the Guarantee Agreements and the Guarantees and the consummation of the transactions contemplated herein and therein, and the compliance by each of the Offerors with their respective obligations hereunder and thereunder will not conflict with or constitute a breach of, or default

under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust, the Company or any of its subsidiaries pursuant to, any material contract, indenture, mortgage, loan agreement (except as described in the Prospectus, as to which a waiver has been obtained), note, lease or other instrument to which the Trust, the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Trust, the Company or any of its subsidiaries is subject, except for a conflict, breach, default, lien, charge or encumbrance which would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of the Trust, the Company and its subsidiaries considered as one enterprise nor will such action result in any violation of the provisions of the Certificate of Trust of the Trust, the charter or by-laws of the Company, or any material applicable law, administrative regulation or administrative or court decree.

(xxi) To the knowledge and information of such counsel after due and diligent inquiry, there are no statutes or regulations required to be described or incorporated by reference in the Registration Statement which are not described or incorporated by reference as required and there are no legal or governmental proceedings pending or threatened which are required to be disclosed or incorporated by reference in the Registration Statement, other than those disclosed or incorporated by reference therein.

(xxii) To the knowledge and information of such counsel after due and diligent inquiry, there are no contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to or incorporated by reference in the Registration Statement or to be filed as exhibits thereto other than those described or referred to or incorporated by reference therein or filed as exhibits thereto; the descriptions thereof or references thereto are true and correct in all material respects and no default exists in the due performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other instrument so described, referred to or incorporated by reference or filed, which default would reasonably be expected to have a material adverse effect on the Company and its subsidiaries considered as one enterprise.

(xxiii) No authorization, approval or consent of any court or governmental authority or agency is necessary

in connection with the issuance and sale of the Capital Securities by the Trust to the Underwriter or the performance by the Trust and the Company of their respective obligations in this Agreement, the Pricing Agreement, the Indenture, the Subordinated Debentures, the Guarantee Agreements, the Declaration and the Capital Securities, except such as have been obtained and made under the federal securities laws or state insurance laws and such as may be required under the state or foreign securities laws.

(xxiv) No authorization, approval, consent, order, registration or qualification of or with any court or federal or New York or Delaware state governmental authority or agency is required for the issuance and sale of the Capital Securities by the Trust to the Underwriter or the performance by the Trust and the Company of their respective obligations in this Agreement, the Pricing Agreement, the Indenture, the Subordinated Debentures, the Capital Securities Guarantee Agreement, the Capital Securities Guarantee, the Declaration and the Capital Securities except such as has been obtained and made under the federal securities laws or such as may be required under state or foreign securities or Blue Sky laws.

(xxv) The Company and each of its subsidiaries hold all material licenses, certificates and permits from all governmental authorities (including, without limitation, the Insurance Licenses) which are necessary to the conduct of their businesses; the Company and its subsidiaries have fulfilled and performed all material obligations necessary to maintain their respective Insurance Licenses, and no event or events have occurred which could reasonably be expected to result in the material impairment, modification, termination or revocation of such Insurance Licenses.

(xxvi) None of the Trust or the Company or any of its subsidiaries is an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the 1940 Act.

(xxvii) All consents and waivers required in connection with the issuance and delivery of the Securities, the execution and delivery of the Underwriting Agreement, the Pricing Agreement, the Declaration, the Capital Securities, the Common Securities, the Indenture, the Subordinated Debt Securities, the Guarantee Agreement and the Guarantees and the consummation of the transactions contemplated therein have been obtained.

Moreover, such counsel shall confirm that nothing has come to such counsel's attention that would lead such counsel to believe

that the Registration Statement, including any information provided pursuant to Rule 430A and related schedules and Rule 434 (except for financial statements or other financial information or statistical data included or incorporated by reference therein, as to which such counsel need express no belief), at the time it became effective or at the Representation Date, 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 or that the Prospectus (except for financial statements and other financial data included or incorporated by reference therein, as to which such counsel need express no belief), at the Representation Date (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriter by the Company for use in connection with the offering of the Capital Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement became effective, in which case at the time it is first provided to the Underwriter for such use) or at Closing Time, included (or includes) an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(2) The favorable opinion, dated as of the Closing Time, of Locke Reynolds Boyd & Weisell, special counsel to the Company, in form and substance satisfactory to counsel for the Underwriter, to the effect that the statements in the Prospectus under the caption "United States Federal Income Taxation" have been reviewed by such counsel and, insofar as they constitute legal conclusions or matters of law, fairly summarize the matters referred to therein.

Moreover, such counsel shall confirm that nothing has come to such counsel's attention that would lead such counsel to believe that the Registration Statement, including any information provided pursuant to Rule 430A or Rule 434 (except for financial statements or other financial information or statistical data included or incorporated by reference therein, as to which such counsel need express no belief), at the time it became effective or at the Representation Date, 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 or that the Prospectus (except for financial statements and other financial data included or incorporated by reference therein, as to which such counsel need express no belief), at the Representation Date (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriter by the Company for use in connection with the offering of the Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective, in which case at the time it is first provided to the

Underwriter for such use) or at the Closing Time, included an untrue statement of a material fact or omitted 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.

(3) The favorable opinion, dated as of Closing Time, of Richards, Layton & Finger, P.A., special Delaware counsel to the Offerors, in form and substance satisfactory to counsel for the Underwriter, to the effect that:

(i) The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Act, and all filings required under the laws of the State of Delaware with respect to the creation and valid existence of the Trust as a business trust have been made.

(ii) Under the Delaware Act and the Declaration, the Trust has the business trust power and authority to own property and conduct its business, all as described in the Prospectus.

(iii) The Declaration constitutes a valid and binding obligation of the Company and the Trustees and is enforceable against the Company and the Trustees in accordance with its terms, subject, as to enforcement, to (i) bankruptcy, insolvency, moratorium, receivership, reorganization, liquidation, fraudulent conveyance and other similar laws relating to or affecting the rights and remedies of creditors generally, (ii) principles of equity, including applicable law relating to fiduciary duties (regardless of whether considered and applied in a proceeding in equity or at law), and (iii) the effect of applicable public policy on the enforceability of provisions relating to indemnification or contribution.

(iv) Under the Delaware Act and the Declaration, the Trust has the business trust power and authority to (i) execute and deliver, and to perform its obligations under, this Agreement and the Pricing Agreement and (ii) issue, and perform its obligations under, the Trust Securities.

(v) Under the Delaware Act and the Declaration, the execution and delivery by the Trust of this Agreement and the Pricing Agreement, and the performance by the Trust of its obligations hereunder and under the Pricing Agreement, have been duly authorized by all necessary action on the part of the Trust.

(vi) Under the Delaware Act, the certificate attached to the Declaration as Exhibit A-1 is an appropriate form of certificate to evidence ownership of the Capital Securities; the Capital Securities have been duly authorized by the Declaration and are duly and validly issued and, subject to qualifications hereinafter expressed in this paragraph (vi), fully paid and nonassessable undivided beneficial interests in the assets of the Trust; the holders of the Capital Securities, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware; said counsel may note that the holders of the Capital Securities may be obligated to make payments as set forth in the Declaration.

(vii) The Common Securities have been duly authorized by the Declaration and are duly and validly issued and represent undivided beneficial interests in the assets of the Trust.

(viii) Under the Delaware Act and the Declaration, the issuance of the Trust Securities is not subject to preemptive rights.

(ix) The issuance and sale by the Trust of the Trust Securities, the purchase by the Trust of the Subordinated Debentures, the execution, delivery and performance by the Trust of this Agreement and the Pricing Agreement, the consummation by the Trust of the transactions contemplated hereby and by the Pricing Agreement and compliance by the Trust with its obligations hereunder and thereunder will not violate (i) any of the provisions of the Certificate of Trust or the Declaration or (ii) any applicable Delaware law or administrative regulation.

(4) The favorable opinion, dated as of Closing Time, of Reid & Riege, P.C., counsel to Fleet National Bank, as Property Trustee under the Declaration, and Guarantee Trustee under the Capital Securities Guarantee Agreements, in form and substance satisfactory to counsel for the Underwriter, to the effect that:

(i) Fleet National Bank is a national banking association with trust powers, formed and authorized to transact the business of banking under the laws of the United States with all necessary power and authority to execute and deliver, and to carry out and perform its obligations under the terms of the Declaration and the Capital Securities Guarantee Agreement.

(ii) The execution, delivery and performance by the Property Trustee of the Declaration and the execution, delivery and performance by the Guarantee Trustee of the Capital Securities Guarantee Agreement have been duly authorized by all necessary corporate action on the part of the Property Trustee and the Guarantee Trustee, respectively. The Declaration and the Capital Securities Guarantee Agreement have been duly executed and delivered by the Property Trustee and the Guarantee Trustee, respectively, and constitute the legal, valid and binding obligations of the Property Trustee and the Guarantee Trustee, respectively, enforceable against the Property Trustee and the Guarantee Trustee, respectively, in accordance with their terms, except to the extent the enforcement thereof may be limited by the Bankruptcy Exceptions.

(iii) The execution, delivery and performance of the Declaration and the Capital Securities Guarantee Agreement by the Property Trustee and the Guarantee Trustee, respectively, do not conflict with or constitute a breach of the Articles of Organization or Bylaws of the Property Trustee and the Guarantee Trustee, respectively.

(iv) No consent, approval or authorization of, or registration with or notice to, any federal banking authority is required for the execution, delivery or performance by the Property Trustee and the Guarantee Trustee of the Declaration and the Capital Securities Guarantee Agreement.

(5) With respect to each Acquired Company, the favorable opinions, dated as of the Closing Time, of Lawrence W. Inlow, Executive Vice President, Secretary and General Counsel of the Company, in form and substance satisfactory to counsel for the Underwriter, to the effect that:

(i) Such Acquired Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of its incorporation; and such Acquired Company has the corporate power and authority under the laws of the State of its incorporation and under its charter to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus or in such Acquired Company's Annual Report filed on Form 10-K for the year ended December 31, 1995.

(ii) To the knowledge and information of such counsel after due and diligent inquiry, such Acquired Company is duly qualified as a foreign Corporation to

transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of such Acquired Company and its subsidiaries, considered as one enterprise.

(iii) The authorized, issued and outstanding capital stock of such Acquired Company is as set forth in the Prospectus (except for subsequent issuances, if any, pursuant to stock option agreements or employee benefit plans), and the shares of issued and outstanding capital stock of such Acquired Company have been duly authorized and validly issued and are fully paid and non-assessable.

(iv) Each subsidiary of such Acquired Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own, lease and operate its properties and to conduct its business as presently conducted and as described in the Registration Statement and the Prospectus or in such Acquired Company's Annual Report filed on Form 10-K for the year ended December 31, 1995. Nothing has come to the attention of such counsel to lead such counsel to believe that any subsidiary is not duly qualified as a foreign corporation to transact business or is not in good standing in each jurisdiction in which such qualification is required, except where the failure to so qualify or be in good standing would not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, or the earnings or business affairs of such Acquired Company and its subsidiaries considered as one enterprise. All of the shares of issued and outstanding capital stock of each subsidiary of such Acquired Company has been duly authorized and validly issued, is fully paid and nonassessable, and all such shares are owned by such Acquired Company or by a subsidiary of such Acquired Company.

(v) Each of the documents of such Acquired Company incorporated by reference in the Registration Statement or the Prospectus at the time they were filed or last amended (other than the financial statements or other financial or statistical data included therein, as to which such counsel need express no belief) complied as to form in all material respects with the requirements of the 1934 Act, and the 1934 Act Regulations, as applicable.

(vi) The statements made in the Joint Proxy Statement-Prospectus of the Company and such Acquired Company, as applicable, and under the relevant captions in the Registration Statement and the Prospectus with respect to such Acquired Company and any corresponding statements in any similar documents of later date which are incorporated by reference in the Registration Statement and Prospectus, to the extent that they involve matters of law, summaries of legal matters, such Acquired Company's charter and bylaws or legal proceedings, or legal conclusions, have been reviewed by such counsel and are correct in all material respects.

(vii) The Merger Agreement between such Acquired Company and the Company (and any of its affiliates) has been duly authorized, executed and delivered by such Acquired Company and constitutes a valid and binding obligation of such Acquired Company, enforceable against such Acquired Company in accordance with its terms, except to the extent that enforcement thereof may be limited by Bankruptcy Exceptions, and to the knowledge and information of such counsel after due and diligent inquiry such Acquired Company is not in default in the observance of the terms and conditions thereof.

(viii) To the knowledge and information of such counsel after due and diligent inquiry, with respect to such Acquired Company, there are no statutes or regulations required to be described or incorporated by reference in the Registration Statement which are not described or incorporated by reference as required and there are no legal or governmental proceedings pending or threatened which are required to be disclosed or incorporated by reference in the Registration Statement, other than those disclosed or incorporated by reference therein.

(ix) Such Acquired Company and its subsidiaries hold all material licenses, certificates and permits from all governmental authorities (including, without limitation, the Insurance Licenses) which are necessary to the conduct of their businesses; such Acquired Company and its subsidiaries have fulfilled and performed all material obligations necessary to maintain their respective Insurance Licenses, and no event or events have occurred which could reasonably be expected to result in the material impairment, modification, termination or revocation of such Insurance Licenses.

Moreover, such counsel shall confirm that nothing has come to such counsel's attention with respect to such Acquired Company that would lead such counsel to believe that the Registration Statement, including any information provided pursuant to

Rule 430A and related schedules and Rule 434 (except for financial statements or other financial information or statistical data included or incorporated by reference therein, as to which such counsel need express no belief), at the time it became effective or at the Representation Date, 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 or that the Prospectus (except for financial statements and other financial data included or incorporated by reference therein, as to which such counsel need express no belief), at the Representation Date (unless the term "Prospectus" refers to a prospectus which has been provided to the Underwriter by the Company for use in connection with the offering of the Capital Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement became effective, in which case at the time it is first provided to the Underwriter for such use) or at Closing Time, included (or includes) an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(6) The favorable opinion, dated as of Closing Time, of LeBoeuf, Lamb, Greene & MacRae, L.L.P., counsel for the Underwriter, with respect to the Capital Securities, the Indenture, the Capital Securities Guarantee Agreement, this Agreement, the Pricing Agreement, the Registration Statement, the Prospectus and other related matters as you may 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. In rendering such opinion, LeBoeuf, Lamb, Greene & MacRae, L.L.P. may rely as to matters governed by the laws of Indiana and Delaware upon the opinions referred to in Sections 5(b)(1) and 5(b)(3) hereto.

(c) Between the date of this Agreement and prior to the Closing Time, no material adverse change shall have occurred in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Trust or the Company and its subsidiaries considered as one enterprise, or any of the Acquired Companies and their respective subsidiaries, in each case, considered as one enterprise, whether or not in the ordinary course of business.

(d) At Closing Time, the Underwriter shall have received a certificate of an executive officer of the Company and a certificate of a Regular Trustee of the Trust, and dated as of Closing Time, to the effect that:

(i) There has been no material adverse change in the condition, financial or otherwise, or in the earnings,

business affairs or business prospects of the Trust, the Company and its subsidiaries considered as one enterprise, or any of the Acquired Companies and their respective subsidiaries, in each case, considered as one enterprise, whether or not in the ordinary course of business.

(ii) The representations and warranties in Section 1 hereof are true and correct as though expressly made at and as of Closing Time.

(iii) The Trust and the Company have complied with all agreements and satisfied all conditions on their part to be performed or satisfied at or prior to Closing Time.

(iv) No stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been initiated or threatened by the Commission.

(e) At the time of the execution of this Agreement, the Underwriter shall have received from Coopers & Lybrand, L.L.P., with respect to the Company and Life Partners Group, Inc. ("LPG"), from Arthur Andersen L.L.P., with respect to American Travellers, and from KPMG Peat Marwick L.L.P., with respect to each of Capitol American and Transport Holdings, a letter, in each case, dated such date, in form and substance satisfactory to the Underwriter, to the effect that

(i) they are independent public accountants with respect to the Company, LPG, American Travellers, Capitol American and Transport Holdings and their respective subsidiaries, as applicable, within the meaning of the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations; (ii) it is their opinion that the financial statements and supporting schedules included or incorporated by reference in the Registration Statement and the Prospectus and covered by their opinions therein comply with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations; (iii) based upon limited procedures set forth in detail in such letter, nothing has come to their attention which causes them to believe that (A) the unaudited financial information of the Company, LPG, American Travellers, Capitol American and Transport Holdings and their respective subsidiaries, as applicable, included or incorporated by reference in the Registration Statement and the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations or are not presented in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included in the Registration Statement, or (B) any unaudited pro forma

consolidated financial statements or any unaudited pro forma consolidating financial statements included or incorporated by reference in the Registration Statement and the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations and the 1934 Act and the 1934 Act Regulations or the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements, or (C) as of a specified date not more than five days prior to the date of this Agreement with respect to the Company, American Travellers, Capitol American and Transport Holdings, there was any increase in consolidated long-term debt (consolidated notes payable with respect to Capitol American) or, at the date of the latest available balance sheet read by such accountants, there was any decrease in consolidated total assets or shareholders' equity, as compared with amounts shown on the latest balance sheet included in the Registration Statement and the Prospectus, or (D) for the period from the closing date of the latest income statement included in the Registration Statement and the Prospectus to the closing date of the latest available income statement read by such accountants, there were any decreases, as compared with the corresponding period of the previous year and with the period of corresponding length ended the date of the latest income statement included in the Registration Statement and the Prospectus, in consolidated premiums (including annuity deposits, if applicable) collected (earned with respect to Capitol American), net investment income, total revenues, earnings applicable to common stock or net income per fully diluted common share except, in all cases set forth in this clause (iii), for changes, increases or decreases which the Registration Statement and the Prospectus discloses have occurred or may occur or which are described in such letter; (iv) they have examined the statutory financial statements of each of the Company's, LPG's, American Traveller's, Capitol American's and Transport Holdings' insurance subsidiaries required to have such an audit, as applicable, and in their opinion such statements, with respect to each insurance subsidiary, have for each relevant period been prepared in accordance with accounting practices prescribed or permitted by the appropriate Insurance Department of the state of domicile of such subsidiary, and such accounting practices have been applied on a consistent basis throughout the periods involved, except as disclosed therein; and (v) in addition to the examination referred to in their opinions and the limited procedures referred to in clause (iii) above, they have carried out certain specified procedures, not constituting an audit, with respect to certain amounts, percentages, ratios and financial information that has been derived from the accounting and financial records of the Company, LPG, American Travellers, Capitol American and Transport Holdings that are subject to internal accounting controls which are included or incorporated by reference in the Registration Statement and Prospectus and

which are specified by the Underwriter, and has found such amounts, percentages, ratios and financial information to be in agreement with the relevant accounting and financial records of the Company, LPG, American Travellers, Capitol American and Transport Holdings and their subsidiaries identified in such letter, as applicable.

(f) At the Closing Time, the Underwriter shall have received from Coopers & Lybrand, L.L.P., with respect to the Company and LPG, from Arthur Andersen L.L.P., with respect to American Travellers, and from KPMG Peat Marwick L.L.P., with respect to each of Capitol American and Transport Holdings, a letter, in each case, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section, except that (i) such statements shall include any financial statements and pro forma financial information incorporated by reference in the Registration Statement and the Prospectus which are filed subsequent to the date of this Agreement and prior to the Closing Date and (ii) the specified date referred to shall be a date not more than five days prior to the Closing Time and, if the Company has elected to rely on Rule 430A under the 1933 Act Regulations, to the further effect that they have carried out procedures as specified in clause (iv) of subsection (e) of this Section with respect to certain amounts, percentages and financial information specified by the Underwriter and deemed to be a part of the Registration Statement pursuant to Rule 430(A)(b) and has found such amounts, percentages and financial information to be in agreement with the records specified in such clause (iv).

(g) At Closing Time, counsel for the Underwriter shall have been furnished with such documents and opinions as they may require for the purpose of enabling it to pass upon the issuance and sale of the Securities as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be satisfactory in form and substance to the Underwriter and counsel for the Underwriter.

(h) At Closing Time, the Capital Securities shall be rated in one of the four highest rating categories for long term debt ("Investment Grade") by any nationally recognized statistical rating agency, and the Trust shall have delivered to the Underwriter a letter, dated the Closing Time, from such nationally recognized statistical rating agency, or other evidence satisfactory to the Underwriter, confirming that the Capital Securities have Investment Grade ratings; and there shall not have occurred any decrease in the ratings of any of the debt securities of the Company or any of the Acquired Companies or of

the Capital Securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act Regulations) and such organization shall not have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the debt securities of the Company or of the Capital Securities.

(i) The NASD shall not have raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Underwriter by notice to the Company at any time at or prior to Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4.

SECTION 6. Indemnification.

(a) The Offerors agree to jointly and severally indemnify and hold harmless the Underwriter and each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information and the Rule 434 Information deemed to be a part thereof, if applicable, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Offerors; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Underwriter), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that the foregoing indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Offerors by the Underwriter expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430(A) Information and the Rule 434 Information deemed to be a part thereof, if applicable, or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto). The foregoing indemnity with respect to any untrue statement contained in or omission from a preliminary prospectus shall not inure to the benefit of the Underwriter (or any person controlling the Underwriter) from whom the person asserting any such loss, liability, claim, damage or expense purchased any of the Securities that are the subject thereof if such person was not sent or given a copy of the Prospectus (or the Prospectus as amended or supplemented) (in each case exclusive of the documents from which information is incorporated by reference) at or prior to the written confirmation of the sale of such Securities to such person and the untrue statement contained in or omission from such preliminary prospectus was corrected in the Prospectus (or the Prospectus as amended or supplemented).

(b) The Underwriter agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, the Trust and each of its Trustees who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430(A) Information and the Rule 434 Information deemed to be a part thereof, if applicable, or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Offerors by the Underwriter expressly for use in the Registration Statement (or any amendment

thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by Salomon Brothers, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Offerors. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party

shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Offerors on the one hand, and the Underwriter, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) 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 Offerors on the one hand, and the Underwriter, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by Offerors on the one hand, and the Underwriter, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of such Securities (before deducting expenses) received by the Offerors and the total underwriting compensation received by the Underwriter, in each case as set forth on the cover of the Prospectus, or, if Rule 434 is used, the corresponding location on the Term Sheet, bear to the aggregate initial public offering price of such Securities as set forth on such cover.

The relative fault of the Offerors, on the one hand, and the Underwriter, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Offerors or by the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Offerors and the Underwriter agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above

in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, the Underwriter shall not 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 which the 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 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Underwriter, and each director of the Company, each officer of the Company and each Trustee of the Trust who signed the Registration Statement, and each person, if any, who controls the Company or the Trust within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Offerors.

SECTION 8. Representations, Warranties and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Agreement and the Pricing Agreement, or contained in certificates of officers of the Company, the Trust and the Acquired Companies submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriter or controlling person, or by or on behalf of the Company, and shall survive delivery of and payment for the Capital Securities to the Underwriter.

SECTION 9. Termination of Agreement.

(a) The Underwriter may terminate this Agreement, by notice to the Company at any time at or prior to Closing Time, if (i) there has been, since the date of this Agreement or since the respective dates as of which information is given in the Registration Statement, any material adverse change or any development which could reasonably be expected to result in a

prospective material adverse change, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, or any of the Acquired Companies and their respective subsidiaries, in each case, considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) there has occurred (A) any material adverse change in the financial markets in the United States or, if the Capital Securities or any related underlying Securities include Debt Securities denominated or payable in, or indexed to, one or more foreign or composite currencies, in the international financial markets or (B) any outbreak of hostilities or escalation of hostilities or other calamity or crisis, or (C) any change or development involving a prospective change in national or international political, financial or economic conditions the effect of which is such as to make it, in the judgment of the Underwriter, impracticable to market the Capital Securities or to enforce contracts for the sale of the Capital Securities, or (iii) trading in securities of the Company or any of the Acquired Companies has been suspended or limited by the Commission, NASD, the American Stock Exchange or the New York Stock Exchange, or if trading generally on either the American Stock Exchange, the New York Stock Exchange or in the over-the-counter market has been suspended or limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices for securities have been required, by either of said exchanges or by such system or by order of the Commission, NASD or any other governmental authority, or (iv) a banking moratorium has been declared by either Federal, New York or Indiana authorities or, if the Capital Securities or any related Underlying Securities include Debt Securities denominated or payable in, or indexed to, one or more foreign or composite currencies, by the relevant authorities in the related foreign country or countries.

(b) If this Agreement and the Pricing Agreement are terminated pursuant to this Section 9, such termination shall be without liability of any party to any other party except as provided in Section 4, and provided, further, that Sections 1, 6, 7 and 8 shall survive such termination and remain in full force and effect.

SECTION 10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriter shall be directed to Salomon Brothers at Seven World Trade Center, New York, New York 10048, Attention of George C. Johns, Director, with a copy to LeBoeuf, Lamb, Greene & MacRae, L.L.P., 125 West 55th Street, New York, New York 10019-5389, Attention: Michael Groll, Esq.; notices to the Company shall be directed to it at 11825 North Pennsylvania Street, Carmel, Indiana 46032, Attention: Lawrence

W. Inlow, Esq., with a copy to Locke Reynolds Boyd & Weisell, 1000 Capital Center South, 201 North Illinois Street, Indianapolis, Indiana 46204, Attention: Stephen J. Dutton, Esq.

SECTION 11. Parties. This Agreement and the Pricing Agreement shall each inure to the benefit of and be binding upon the Offerors and the Underwriter and their respective successors. Nothing expressed or mentioned in this Agreement or the Pricing Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriter and the Offerors and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or the Pricing Agreement or any provision herein or therein contained. This Agreement and the Pricing Agreement and all conditions and provisions hereof and thereof are intended to be for the sole and exclusive benefit of the parties hereto and thereto and their respective successors and legal representatives, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from the Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 12. GOVERNING LAW AND TIME. THIS AGREEMENT AND THE PRICING AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SAID STATE. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME UNLESS OTHERWISE INDICATED.

SECTION 13. Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

EXHIBIT A

325,000 Preferred Securities

CONSECO FINANCING TRUST II

(a Delaware business trust)

8.70% Capital Trust Pass-through Securities (TruPSSM)

(Liquidation Amount of \$1,000 per Security)

PRICING AGREEMENT

November 22, 1996

Salomon Brothers Inc
Seven World Trade Center
New York, New York 10048

Ladies and Gentlemen:

Reference is made to the Underwriting Agreement, dated November 22, 1996 (the "Underwriting Agreement"), relating to the purchase by Salomon Brothers Inc of the above 8.70% Capital Trust Pass-through Securities (the "Capital Securities"), of Consecoco Financing Trust II, a Delaware business trust (the "Trust").

Pursuant to Section 2 of the Underwriting Agreement, the Trust and Consecoco, Inc. (the "Company"), an Indiana corporation, agree with the Underwriter as follows:

1. The initial public offering price per security for the Capital Securities, determined as provided in said Section 2, shall be \$1,000.
2. The purchase price per security for the Capital Securities to be paid by Salomon Brothers Inc shall be \$1,000, being an amount equal to the initial public offering price set forth above.
3. The compensation to be paid by the Company to Salomon Brothers Inc in respect of its commitments hereunder shall be an amount in same day funds of \$10 per Capital Security.

SM Salomon Brothers Inc has filed applications with the United States Patent and Trademark Office for the registration of the TruPS service mark.

- 1 -

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11/26/96 5:04 pm

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Trust a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriter and the Offerors in accordance with its terms.

Very truly yours,

CONSECO, INC.

By:
Name: Rollin M. Dick
Title: Executive Vice President

CONSECO FINANCING TRUST II

By:
Name: Rollin M. Dick
Title: Regular Trustee

CONFIRMED AND ACCEPTED, as of the date first above written:

SALOMON BROTHERS INC

By:

- 2 -

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11/26/96 5:04 pm

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Very truly yours,

CONSECO, INC.

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick
Title: Executive Vice President

CONSECO FINANCING TRUST II

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick
Title: Regular Trustee

CONFIRMED AND ACCEPTED, as of the date first above written:

SALOMON BROTHERS INC

By: /s/ GEORGE C. JOHNS

- 2 -

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11/26/96 5:04 pm

SECOND SUPPLEMENTAL INDENTURE

between

CONSECO, INC.

and

FLEET NATIONAL BANK, AS TRUSTEE

Dated as of November 22, 1996

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SECOND SUPPLEMENTAL INDENTURE dated as of November 22, 1996 (the "Second Supplemental Indenture") between Conseco, Inc., an Indiana corporation (the "Issuer"), and Fleet National Bank, as trustee (the "Trustee") under the Indenture dated as of November 14, 1996 between the Issuer and the Trustee (the "Base Indenture") as supplemented by a First Supplemental Indenture dated as of November 14, 1996 (the Base Indenture as so supplemented, the "Indenture").

WHEREAS, the Issuer executed and delivered the Indenture to the Trustee to provide for the future issuance of the Issuer's unsecured subordinated debentures, notes or other evidence of indebtedness (the "Securities") to be issued from time to time in one or more series as might be determined by the Issuer under the Indenture, in an unlimited aggregate principal amount which may be authenticated and delivered as provided in the Indenture;

WHEREAS, pursuant to the terms of the Indenture, the Issuer desires to provide for the establishment of a new series of its Securities to be known as its 8.70% Subordinated Deferrable Interest Debentures due 2026 (the "Debentures"), the form and substance of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Second Supplemental Indenture;

WHEREAS, Conseco Financing Trust II, a Delaware statutory business trust (the "Trust"), is offering to the public \$325 million aggregate liquidation amount of its 8.70% Capital Trust Pass-through Securities (the "Capital Securities"), representing preferred undivided beneficial interests in the assets of the Trust and proposes to invest the proceeds from such offering, together with the proceeds of the issuance and sale by the Trust to the Issuer of \$10,100,000 aggregate liquidation amount of its 8.70% Trust Common Securities (the "Common Securities"), in \$335,100,000 aggregate principal amount of the Debentures;

WHEREAS, the Issuer has requested that the Trustee execute and deliver this Second Supplemental Indenture; and

WHEREAS, all requirements necessary to make this Second Supplemental Indenture a valid instrument in accordance with its terms and to make the Debentures, when executed by the Issuer and authenticated and delivered by the Trustee as provided in the Indenture, the valid obligations of the Issuer have been performed, and the execution and delivery of this Second Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, in consideration of the purchase and acceptance of the Debentures by the Holders thereof, and for the purpose of setting forth, as provided in the Indenture, the form and substance of the Debentures and the terms, provisions and conditions thereof, the Issuer covenants and agrees with the Trustee as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definition of Terms.

Unless the context otherwise requires:

- (a) a term defined in the Indenture (including as set forth in the first paragraph of Section 1.1 of the Indenture) has the same meaning when used in this Second Supplemental Indenture unless otherwise defined herein;
- (b) a term defined anywhere in this Second Supplemental Indenture has the same meaning throughout;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a Section or Article is to a Section or Article of this Second Supplemental Indenture unless otherwise specified herein;
- (e) headings are for convenience of reference only and do not affect interpretation;
- (f) the following terms have the meanings given to them in the Declaration (as defined herein) or in the terms of the Trust Securities (as defined herein) as established in accordance with the Declaration:
 - (i) Affiliate;
 - (ii) Business Day;
 - (iii) Debenture Issuer;
 - (iv) Delaware Trustee;
 - (v) Dissolution Opinion;
 - (vi) Distribution;
 - (vii) No Recognition Opinion;
 - (viii) Capital Security Certificate;
 - (ix) Pricing Agreement;

(x) Pro Rata;

(xi) Property Trustee;

(xii) Redemption Tax Opinion;

(xiii) Regular Trustees;

(xiv) Securities;

(xv) Securities Guarantees;

(xvi) Sponsor;

(xvii) Tax Event; and

(xviii) Underwriting Agreement;

(g) The following terms have the meanings given to them in this Section 1.1(g):

"Additional Interest" shall have the meaning set forth in Section 2.5(c).

"Compounded Interest" shall have the meaning set forth in Section 4.1.

"Coupon Rate" shall have the meaning set forth in Section 2.5(a).

"Declaration" means the Amended and Restated Declaration of Trust of Consecro Financing Trust II, a Delaware statutory business trust, dated as of November 22, 1996.

"Deferred Interest" shall have the meaning set forth in Section 4.1.

"Dissolution Event" means that as a result of an election by the Issuer, the Trust is to be dissolved in accordance with the Declaration, and the Debentures held by the Property Trustee are to be distributed to the holders of the Trust Securities Pro Rata in accordance with the Declaration.

"Extended Interest Payment Period" shall have the meaning set forth in Section 4.1.

"Global Debenture" shall have the meaning set forth in Section 2.4(a)(i).

"Interest Payment Date" shall have the meaning set forth in Section 2.5 (a).

"Make-Whole Premium" shall have the meaning set forth in Section 3.2.

"Maturity Date" means the date on which the Debentures mature and on which the principal shall be due and payable together with all accrued and unpaid interest thereon (including Compounded Interest, if any).

"Ministerial Action" shall have the meaning set forth in Section 3.

"Non Book-Entry Capital Securities" shall have the meaning set forth in Section 2.4(a)(ii).

"Optional Redemption Price" shall have the meaning set forth in Section 3.2.

"Redemption Price" shall have the meaning set forth in Section 3.1.

"Trust Securities" shall mean the Securities.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE DEBENTURES

SECTION 2.1 Designation and Principal Amount; Purchase Price; Payment of Principal; Global Securities.

(a) There is hereby authorized a series of Securities designated the "8.70% Subordinated Deferrable Interest Debentures due 2026," limited in aggregate principal amount to \$335,100,000 (not including Debentures authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debentures pursuant to Sections 3.4, 3.5, 3.6, 8.6 or 10.7 of the Indenture), which amount shall be as set forth in a Company Order for the authentication and delivery of Debentures pursuant to Section 3.3 of the Indenture.

(b) The Debentures shall be issued for a purchase price equal to 100% of the principal amount of such Debentures.

(c) The principal of the Debentures shall be due and payable in full on the Maturity Date.

(d) The Debentures shall initially be issued in fully registered non-book entry certificated form in the aggregate principal amount of \$335,100,000.

SECTION 2.2 Maturity. The Maturity Date will be November 15, 2026.

SECTION 2.3 Form and Payment.

Except as provided in Section 2.4, the Debentures shall be issued as Registered Securities in fully registered certificated form without interest coupons. The place where principal of and interest (including the Compounded Interest, if any) on the Debentures will be payable, the Debentures may be surrendered for registration of transfer or exchange, and where notices and demands to or upon

the Issuer in respect of the Debentures and the Indenture may be served shall be the Corporate Trust Office of the Trustee, provided, however, that payment of interest may be made at the option of the Issuer by wire transfer to an account maintained by a Holder (upon appropriate instructions from such Holder) or by check mailed to the Holder at such address as shall appear in the Register. Notwithstanding the foregoing, so long as the Holder of any Debentures is the Property Trustee, the payment of the principal of and interest (including Compounded Interest, if any) on such Debentures held by the Property Trustee will be made by wire transfer of immediately available funds at such place and to such account as may be designated by the Property Trustee. Payment of principal of the Debentures will only be made upon surrender of the Debentures to the Trustee. The Debentures will be denominated in Dollars and payment of principal and interest on the Debentures shall be made in Dollars.

SECTION 2.4 Global Debenture.

(a) In connection with a distribution of the Debentures to the holders of the Trust Securities pursuant to the Declaration:

(i) The Debentures in certificated form to be distributed to the holders of Capital Securities may be presented to the Trustee by the Property Trustee in exchange for a global Debenture in an aggregate principal amount equal to the aggregate principal amount of all Outstanding Debentures of such series (a "Global Debenture"), to be registered in the name of the Depository, or its nominee, and delivered by the Trustee to the Depository for crediting to the accounts of its participants pursuant to the instructions of the Regular Trustees. The Issuer upon any such presentation shall execute a Global Debenture in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with the Indenture and this Second Supplemental Indenture. Payments on the Debentures issued as a Global Debenture will be made to the Depository.

(ii) If any Capital Securities are held in non book-entry certificated form, the Debentures in certificated form may be presented to the Trustee by the Property Trustee and any Capital Security Certificate which represents Capital Securities other than Capital Securities held by the Depository or its nominee ("Non Book-Entry Capital Securities") will be deemed to represent beneficial interests in Debentures presented to the Trustee by the Property Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book-Entry Capital Securities until such Capital Security Certificates are presented to the Registrar for transfer or reissuance at which time such Capital Security Certificates will be canceled and a Debenture, registered in the name of the holder of the Capital Security Certificate or the transferee of the holder of such Capital Security Certificate, as the case may be, with an aggregate principal amount equal to the aggregate liquidation amount of the Capital Security Certificate canceled, will be executed by the Issuer and delivered to the Trustee for authentication and delivery in accordance with the Indenture and this Second Supplemental Indenture. On issue of such Debentures, Debentures with an equivalent aggregate principal amount that were presented by the Property Trustee to the Trustee will be deemed to have been canceled.

(b) Unless and until it is exchanged for Debentures in registered certificated form, a Global Debenture may be transferred, in whole but not in part, only by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository selected or approved by the Issuer or a nominee of such successor Depository.

(c) If at any time the Depository for the Debentures notifies the Issuer that it is unwilling or unable to continue as Depository for the Debentures or if at any time the Depository for the Debentures shall no longer be registered or in good standing as a clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, at a time at which the Depository is required to be so registered to act as Depository for the Debentures, and a successor Depository for such series is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such condition, as the case may be, the Issuer will execute, and, subject to Article 3 of the Indenture, the Trustee, upon written notice from the Issuer, will authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. In addition, the Issuer, in its sole discretion, may at any time determine that the Debentures shall no longer be represented by a Global Debenture. In such event the Issuer will execute, and subject to Article 3 of the Indenture, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Issuer, will authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. Upon the exchange of the Global Debenture for such Debentures in definitive registered form without coupons, in authorized denominations, the Global Debenture shall be canceled by the Trustee. Such Debentures in definitive registered form issued in exchange for the Global Debenture shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such registered certificated Debentures in definitive form in exchange for the Global Debenture to the Depository for delivery to the Persons in whose names such Debentures are so registered.

SECTION 2.5 Interest.

(a) The Debentures will bear interest at the fixed rate of 8.70% per annum (the "Coupon Rate") from the original date of issuance or from the most recent Interest Payment Date to which interest has been paid or duly provided for until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the Coupon Rate, compounded semiannually, payable (subject to the provisions of Article IV) semiannually in arrears on May 15 and November 15 of each year (each, an "Interest Payment Date"), commencing on May 15, 1997. Interest on the Debentures (except defaulted interest) shall be paid to the Persons in whose name the Debentures are registered, at the close of business on the regular Record Date for such interest installment (including Debentures that are cancelled after the Record

Date and before the Interest Payment Date), which, with respect to any Debentures of which the Property Trustee is the Holder or with respect to a Global Debenture, shall be the close of business on the Business Day next preceding that Interest Payment Date. Notwithstanding the foregoing sentence, if the Capital Securities are no longer in book-entry only form or if, pursuant to the Indenture and this Second Supplemental Indenture the Debentures are not represented by a Global Debenture, the Issuer may select a regular Record Date for such interest installment which shall conform to the rules of any securities exchange, interdealer quotation system or other organization on which the Debentures are listed and which shall be at least one Business Day but less than 60 Business Days before the applicable Interest Payment Date. Notwithstanding the foregoing, any interest that is payable at maturity shall be payable to the Person to whom principal payable at maturity shall be payable.

(b) The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual period on the basis of the actual number of days elapsed per 30-day month. In the event that any date on which interest is payable on the Debentures is not a Business Day, then payment of the interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), except that, notwithstanding any provision of the Indenture to the contrary, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(c) If, at any time while the Property Trustee is the Holder of any Debentures, the Trust or the Property Trustee is required to pay any taxes, duties, assessment or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company will pay as additional interest ("Additional Interest") on the Debentures held by the Property Trustee, such additional amounts as shall be required so that the net amounts received and retained by the Trust and the Property Trustee after paying such taxes, duties, assessments or other governmental charges will be equal to the amounts the Trust and the Property Trustee would have received had no such taxes, duties, assessments or other government charges been imposed.

SECTION 2.6 Authorized Denominations.

The Debentures shall be issuable in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

SECTION 2.7 Redemption.

The Debentures are not subject to conversion at the option of the Holder. The Debentures are not subject to redemption at the option of the Holder and are subject to redemption at the option of the Issuer or otherwise as provided in Article III hereof.

SECTION 2.8 Defeasance.

The Debentures shall not be subject to the provisions of Article 4 of the Indenture concerning the satisfaction and discharge of the Issuer's indebtedness and obligations under the Indenture and the termination of certain covenants of the Issuer under the Indenture.

SECTION 2.9 No Sinking Fund.

The Debentures shall not be entitled to the benefit of any sinking fund or analogous provision.

SECTION 2.10 Depository.

The Depository Trust Company (or its nominee) shall act as the initial Depository for any Global Debenture which may be issued pursuant to this Second Supplemental Indenture.

ARTICLE III

REDEMPTION OF THE DEBENTURES

SECTION 3.1 Tax Event Redemption.

If a Tax Event has occurred and is continuing and:

(a) the Issuer has received a Redemption Tax Opinion; or

(b) after receiving a Dissolution Tax Opinion, the Regular Trustees shall have been informed by tax counsel rendering the Dissolution Tax Opinion that a No Recognition Opinion cannot be delivered to the Trust, the Issuer shall have the right upon not less than 30 days nor more than 60 days notice to the Holders of the Debentures to redeem the Debentures, in whole or in part, for cash within 90 days following the occurrence of such Tax Event (the "90 Day Period") at a redemption price equal to 100% of the principal amount to be redeemed plus any accrued and unpaid interest thereon (including Compounded Interest, if any) to the date of such redemption (the "Redemption Price"), provided that if at the time there is available to the Issuer the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure which has no adverse effect on the Issuer, the Trust or the Holders of the Trust Securities issued by the Trust, the Issuer shall pursue such Ministerial Action in lieu of redemption, and, provided, further, that the Issuer shall have no right to redeem the Debentures while the Trust is pursuing any Ministerial Action pursuant to its obligations under the Declaration. The Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or such earlier time as the Issuer determines; provided, that, the Issuer

shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

SECTION 3.2 Optional Redemption.

Subject to the provisions of Section 3.3 and Article 10 of the Indenture, the Issuer shall have the right to redeem the Debentures, in whole or in part, at any time or from time to time, after the issuance of the Capital Securities, at a redemption price equal to 100% of the principal amount to be redeemed plus the Make-Whole Premium, if any, plus any accrued and unpaid interest thereon, (including Compounded Interest, if any), to the date of such redemption (collectively the "Optional Redemption Price"). The Make-Whole Premium means the excess, if any of (i) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date on a semiannual basis at the Treasury Rate plus 50 basis points over (ii) 100% of the principal amount of Debentures to be redeemed. Any redemption pursuant to this paragraph will be made upon not less than 30 days nor more than 60 days notice to the Holder of the Debentures, at the Optional Redemption Price. The Optional Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or at such earlier time as the Issuer determines and specifies in the notice of redemption; provided, that, the Issuer shall deposit with the Trustee an amount sufficient to pay the Optional Redemption Price by 10:00 a.m., New York time, on the date such Optional Redemption Price is to be paid.

For purposes of this Section 3.2:

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

"Comparable Treasury Issue" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Debentures to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Debentures. "Independent Investment Banker" means one of the Reference Treasury Dealers appointed by the Trustee after consultation with the Issuer.

"Comparable Treasury Price" means, with respect to any redemption date,
(i) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for U.S. Government Securities" or (ii) if such release (or any successor release) is not published or does not contain such prices on such business day, (A) the average of the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer

quotations, or (B) if the Trustee obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such Quotations. "Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m. on the third business day preceding such redemption date.

"Reference Treasury Dealer" means each of Salomon Brothers Inc, Goldman, Sachs & Co., J.P. Morgan Securities Inc. and UBS Securities Inc. and their respective successors; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government Securities dealer in New York City (a "Primary Treasury Dealer"), the Issuer shall substitute therefor another Primary Treasury Dealer.

SECTION 3.3 Partial Redemption.

(a) The Issuer may not redeem fewer than all of the Outstanding Debentures unless all accrued and unpaid interest on the Debentures has been paid as of the Interest Payment Date next preceding the Redemption Date.

(b) If the Debentures are only partially redeemed pursuant to Section 3.1 or Section 3.2, the Debentures will be redeemed pro rata or by lot or by any other method utilized by the Trustee; provided that if at the time of redemption the Debentures are registered as a Global Debenture, the Depository shall determine, in accordance with its procedures, the principal amount of such Debentures credited to each of its participant accounts to be redeemed.

ARTICLE IV

EXTENSION OF INTEREST PAYMENT PERIOD

SECTION 4.1 Extension of Interest Payment Period.

The Issuer shall have the right, at any time and from time to time during the term of the Debentures, to defer payments of interest on the Debentures by extending the interest payment period of the Debentures for a period not exceeding 10 consecutive semiannual periods (the "Extended Interest Payment Period"), during which Extended Interest Payment Period no interest shall be due and payable; provided that no Extended Interest Payment Period may extend beyond the Maturity Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 4.1, will bear interest thereon at the Coupon Rate compounded semiannually for each semiannual period of the Extended Interest Payment Period ("Compounded Interest"). At the end of the Extended Interest Payment Period, the Issuer shall pay all interest accrued and unpaid on the Debentures, including any Compounded Interest (all such interest the "Deferred Interest") that

shall be payable to the Holders of the Debentures in whose names the Subordinated Debentures are registered in the Register as of the Record Date relating to the Interest Payment Date that corresponds to the end of such Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Issuer may further extend such period, provided that such period together with all such previous and further extensions thereof shall not exceed 10 consecutive semiannual periods or extend beyond the Maturity Date. Upon the termination of any Extended Interest Payment Period and upon the payment of all Deferred Interest then due, the Issuer may commence a new Extended Interest Payment Period, subject to the foregoing requirements. No interest shall be due and payable during an Extended Interest Payment Period, except at the end thereof, but the Issuer may prepay at any time all or any portion of the Deferred Interest accrued during an Extended Interest Payment Period.

SECTION 4.2 Notice of Extension.

(a) If the Property Trustee is the only registered Holder of the Debentures at the time the Issuer selects an Extended Interest Payment Period, the Issuer shall give written notice to the Trustee, the Regular Trustees and the Property Trustee of its selection of such Extended Interest Payment Period one Business Day before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities are payable, or (ii) the date the Regular Trustees, on behalf of the Trust, are required to give notice of the record date, or the date such Distributions are payable, to the holders of the Capital Securities (or any national securities exchange or other self regulatory organization on which the Capital Securities are listed).

(b) If the Property Trustee is not the only Holder of the Debentures at the time the Issuer selects an Extended Interest Payment Period, the Issuer shall give the Trustee, the Property Trustee and the Holders of the Debentures written notice of its selection of such Extended Interest Payment Period 10 Business Days before the earlier of (i) the next succeeding Interest Payment Date, or (ii) the date the Issuer is required to give notice of the record or payment date of such interest payment to Holders of the Debentures (or any national securities exchange or other self regulatory organization on which the Debentures are listed).

(c) The semiannual period in which any notice is given pursuant to paragraphs (a) or (b) of this Section 4.2 shall be counted as one of the 10 semiannual periods permitted in the maximum Extended Interest Payment Period permitted under Section 4.1.

SECTION 4.3 Limitation of Transactions.

If the Issuer shall exercise its right to defer payment of interest as provided in Section 4.1, during any Extended Interest Payment Period (a) the Issuer shall not declare or pay any dividends on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock, (b) the Issuer shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities issued by the Issuer that rank *pari passu* with or junior to the Debentures and (c) the Issuer shall not make guarantee payments with respect to the foregoing (other than pursuant to the Securities

Guarantees); provided, however, that notwithstanding the restriction in clause

(a) above, the Issuer may (i) declare and pay a stock dividend where the dividend stock is the same stock as that on which the dividend is being paid and

(ii) purchase or acquire shares of its common stock in connection with the satisfaction by the Issuer of its obligations under any employee benefit plans.

ARTICLE V

EXPENSES

SECTION 5.1 Payment of Expenses.

In connection with the offering, sale and issuance of the Debentures to the Property Trustee in connection with the sale of the Trust Securities by the Trust and during the existence of the Trust, the Issuer, in its capacity as borrower with respect to the Debentures, shall:

(a) pay all costs and expenses relating to the offering, sale and issuance of the Debentures, including commissions to the underwriters payable pursuant to the Underwriting Agreement and compensation of the Trustee under the Indenture in accordance with the provisions of Section 6.9 of the Indenture;

(b) pay other debts and obligations of the Trust (other than with respect to the Trust Securities) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization, maintenance and dissolution of the Trust, the offering, sale and issuance of the Trust Securities (including commissions to the underwriter payable pursuant to the Pricing Agreement), the retention of the Regular Trustees, reimbursement of the Regular Trustees as provided in the Declaration, the fees and expenses of the Property Trustee and the Delaware Trustee, the trustee under the Capital Securities Guarantee and the Common Securities Guarantee, the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing and disposition of Trust assets, and the fees and expenses related to the enforcement by the Property Trustee of the rights of the holders of the Capital Securities) and all other amounts payable by the Issuer pursuant to the Declaration;

(c) be primarily liable for any indemnification obligations arising with respect to the Declaration; and

(d) pay any and all taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed on the Trust or its assets and all liabilities, costs and expenses of the Trust with respect to such taxes, duties, assessments or governmental charges.

SECTION 5.2 Payment Upon Resignation or Removal.

Upon termination of this Second Supplemental Indenture or the Indenture or the removal or resignation of the Trustee pursuant to Section 6.10 of the Indenture, the Issuer shall pay to the Trustee all amounts due to the Trustee accrued to the date of such termination, removal or resignation. Upon termination of the Declaration or the removal or resignation of the Delaware Trustee or the Property Trustee, as the case may be, pursuant to Section 5.7 of the Declaration, the Issuer shall pay to the Delaware Trustee or the Property Trustee, as the case may be, all amounts due to such trustee accrued to the date of such termination, removal or resignation.

ARTICLE VI

FORM OF DEBENTURE

SECTION 6.1 Form of Debenture.

The Debentures and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the following forms:

(IF THE DEBENTURE IS TO BE A GLOBAL DEBENTURE, INSERT - This Debenture is in Global form within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. Unless and until it is exchanged in whole or in part for securities in certificated form in the limited circumstances described in the indenture, this security may not be transferred except as a whole by the depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

Unless this Debenture is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration of transfer, exchange or payment, and any Debenture issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.)

CONSECO, INC.

8.70% SUBORDINATED DEFERRABLE INTEREST DEBENTURE

No. DUE NOVEMBER 15, 2026 REGISTERED

\$

Conseco, Inc., an Indiana corporation (the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to , or registered assigns, the principal sum of Dollars on November 15, 2026 and to pay interest on said principal sum from November 27, 1996, or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, semiannually (subject to deferral as set forth herein) in arrears on May 15 and November 15 of each year commencing May 15, 1997, at the rate of 8.70% per annum until the principal hereof shall have become due and payable, and on any overdue principal and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded semiannually. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual period on the basis of the actual number of days elapsed per 30-day month. In the event that any date on which interest is payable on this Debenture is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the person in whose name this Debenture is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the Business Day next preceding such Interest Payment Date. [If the Capital Securities are no longer represented by a global certificate or if the Debentures are not represented by a global debenture - which shall be the close of business on the Business Day next preceding such Interest payment.] Notwithstanding the foregoing, any interest that is payable on the Maturity Date shall be payable to the Person to whom principal payable at the Maturity Date shall be payable. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered Holders on such regular record date and may be paid to the Person in whose name this Debenture (or one or more Predecessor Security) is registered at the close of business on a special record date to be fixed in accordance with the provisions of Section 3.7(b) of the Indenture. The principal of and the interest on this Debenture shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Register. Notwithstanding the foregoing, so long as the Holder of this Debenture is the Property Trustee, the payment of the principal of and interest on this

Debenture will be made by wire transfer in immediately available funds at such place and to such account as may be designated by the Property Trustee. Payment of principal of the Debentures will only be made upon surrender of the Debentures to the Trustee or Paying Agent.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, and this Debenture is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Debenture, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Debenture shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Debenture are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____, 1996.

CONSECO, INC.

By: _____

By: _____

SEAL

(FORM OF CERTIFICATE OF AUTHENTICATION)

CERTIFICATE OF AUTHENTICATION

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

FLEET NATIONAL BANK, as Trustee

By: _____
Authorized Signatory

(FORM OF REVERSE OF DEBENTURE)

This Debenture is one of a duly authorized series of Debentures of the Company (herein sometimes referred to as the "Debentures"), specified in the Indenture, all issued or to be issued in one or more series under and pursuant to an Indenture dated as of November 14, 1996, duly executed and delivered between the Company and Fleet National Bank, as Trustee (the "Trustee"), (as supplemented by the First Supplemental Indenture dated as of November 14, 1996, the "Base Indenture") as supplemented by the Second Supplemental Indenture dated as of November 22, 1996 between the Company and the Trustee (the Base Indenture as so supplemented, the "Indenture"), to which a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Debentures, and to all of which provisions the Holder of this Debenture by acceptance hereof, assents and agrees. By the terms of the Indenture, the Debentures are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Debentures is limited in aggregate principal amount as specified in said Second Supplemental Indenture.

The Company shall have the right to redeem this Debenture at the option of the Company, at any time and from time to time (an "Optional Redemption"), at a redemption price equal to 100% of the principal amount plus the Make-Whole Premium, if any, plus any accrued and unpaid interest, including any Compounded Interest, if any, to the date of such redemption (collectively the "Optional Redemption Price"). The Make-Whole Premium shall mean the excess, if any, of (i) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date on a semiannual basis at the Treasury Rate (as defined in the Indenture) plus 50 basis points over (ii) 100% of the principal amount of Debentures to be redeemed. Any redemption pursuant to this paragraph will be made upon not less than 30 nor more than 60 days' notice at the Optional Redemption Price.

If, at any time, a Tax Event (as defined below) shall occur or be continuing after receipt of a Dissolution Tax Opinion (as defined below) and either (a) the Regular Trustees and the Issuer shall have received an opinion (a "Redemption Tax Opinion") of a nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Issuer would be precluded from deducting the interest on the Debentures for United States federal income tax purposes even after the Debentures were distributed to the Holders of Capital Securities and Common Securities in liquidation of such holder's interest in the Trust as set forth in the Declaration of Trust or (b) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion (as defined below) cannot be delivered, the Issuer shall have the right at any time, upon not less than 30 nor more than 60 days' notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event; provided, however, that, if at that time there is available to the Issuer or the Trust the opportunity to eliminate, within such 90 day period the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure, which has no adverse effect on the Trust, the Issuer or the Holders of the Capital Securities, the Issuer or the

Trust will pursue such measure in lieu of redemption and provided further that the Issuer shall have no right to redeem the Debentures while the Trust is pursuing any such Ministerial Action.

"Tax Event" means that the Regular Trustees shall have received an opinion of independent tax counsel experienced in such matters (a "Dissolution Opinion") to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment, or change is effective or such pronouncement or decision is announced on or after the date of original issuance of the Preferred Securities, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days after the date thereof, subject to United States federal income tax with respect to interest accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days after the date thereof, subject to more than a de minimis amount of taxes, duties or other governmental charges, or (iii) interest payable to the Trust on the Debentures is not, or within 90 days of the date thereof, will not be deductible, in whole or in part, by the Company for United States federal income tax purposes.

A "No Recognition Opinion" means an opinion of nationally recognized independent tax counsel experienced in such matters, which may rely on published revenue rulings of the Internal Revenue Service, to the effect that all holders of the Trust Securities will not recognize gain of loss for United States federal income tax purposes as a result of the dissolution of the Trust and distribution of the Debentures.

If the Debentures are only partially redeemed by the Company pursuant to an Optional Redemption or a redemption pursuant to a Tax Event, the Debentures will be redeemed pro rata or by lot or in some other equitable manner determined by the Trustee.

In the event of redemption of this Debenture in part only, a new Debenture or Debentures of this series (for the unredeemed portion hereof) will be issued in the name of the Holder hereof upon the cancellation hereof.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Debentures may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and limitations provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Debentures of each series affected at the time outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Debentures; provided, however, that no such supplemental indentures shall (i) change the Stated Maturity of the principal or any

installment of principal or any installment of interest (other than as contemplated herein), or reduce the amount or principal or interest thereon or any premium payable upon redemption or repayment thereof, or change the Place of Payment or currency in which principal or any interest is payable, or impair the right to institute suit for the enforcement of any payment of the principal and any premium and interest without the consent of the Holder of each Debenture so affected; (ii) reduce the aforesaid percentage of Debentures, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of each Debenture then outstanding and affected thereby; (iii) change any obligation of the Company to maintain an office or agency in the Place of Payment; or (iv) modify any of the above provisions. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Debentures of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Debentures of such series, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal or interest on the Debentures or a default in respect of a covenant or provision of the Indenture or the Debentures of such series which cannot be modified or amended without the consent of each Holder of Debentures of such series. Any such consent or waiver by the registered Holder of this Debenture (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Debenture and of any Debentures issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Debenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Debenture at the time and place and at the rate and in the money herein prescribed.

The Company shall have the right at any time during the term of the Debentures from time to time to extend the interest payment period of such Debentures for up to 10 consecutive semiannual periods not to extend beyond the Maturity Date of the Debentures (an "Extended Interest Payment Period"), at the end of which period the Company shall pay all interest then accrued and unpaid (together with interest thereon at the rate specified for the Debentures to the extent that payment of such interest is enforceable under applicable law). In the event that the Company exercises the right to defer interest payments, then, prior to the payment of all accrued interest on outstanding Debentures, (a) the Company shall not declare or pay dividends on, or make a distribution with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any of its capital stock, (b) the Company shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities issued by the Company that rank *pari passu* with or junior to the Debentures and (c) the Company shall not make any guarantee payments with respect to the foregoing (other than pursuant to the Securities Guarantees); provided, however, that restriction (a) above does not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid and (ii) purchases or acquisitions of shares of Company Common Stock in connection with the satisfaction by the Company of its obligation under any

employee benefit plans. Before the termination of any such Extended Interest Payment Period, the Company may further extend such Extended Interest Payment Period, provided that such Extended Interest Payment Period together with all such previous and further extensions thereof shall not exceed 10 consecutive semiannual periods and shall not extend beyond the Maturity Date of the Debentures. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extended Interest Payment Period.

At any time the Company will have the right to dissolve the Trust and cause the Debentures to be distributed to the holders of the Trust Securities in liquidation of the Trust.

As provided in the Indenture and subject to certain limitations therein set forth, this Debenture is transferable by the registered Holder hereof on the Register of the Company, upon surrender of this Debenture for registration of transfer at the Corporate Trust Office of the Trustee accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Debentures of authorized denominations and for the same aggregate principal amount and series will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Debenture, the Company, the Trustee, any paying agent and any Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Registrar) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Debenture or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

[The Debentures of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof, provided that this Global Debenture is exchangeable for Debentures in definitive form only under certain limited circumstances set forth in the Indenture.] As provided in the Indenture and subject to certain limitations herein and therein set forth, Debentures of this series so issued are exchangeable for a like aggregate principal amount of Debentures of this series of a different authorized denomination, as requested by the

Holder surrendering the same. All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company and the Holder agree (i) that for United States federal, state and local tax purposes it is intended that the Debenture constitute indebtedness and (ii) to file all United States federal, state and local tax returns and reports on such basis (unless the Company or the Holder, as the case may be, shall have received an opinion of independent nationally recognized tax counsel to the effect that as a result of a change in law after the date of the issuance of the Debenture the Company or the Holder, as the case may be, is prohibited from filing on such basis).

ARTICLE VII

ORIGINAL ISSUE OF DEBENTURES

SECTION 7.1 Original Issue of Debentures.

Debentures in the aggregate principal amount of \$335,100,000 may, upon execution of this Second Supplemental Indenture, be executed by the Issuer and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver such Debentures to or upon the written order of the Issuer, signed by its Chairman, its President, or any Vice President and its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, without any further action by the Issuer.

SECTION 7.2 Reports by the Trustee.

Up until and including the Maturity Date, the Trustee shall, in respect of each applicable date, make such reports within such time periods as are required to be made by the Trustee under the Trust Indenture Act and the Indenture.

ARTICLE VIII

COVENANTS

SECTION 8.1 Covenants as to Trust.

In the event Debentures are issued and sold to the Property Trustee in connection with the issuance of Trust Securities by the Trust, for so long as the Trust Securities remain outstanding, the Issuer will (i) maintain 100% direct or indirect ownership of the Common Securities of the Trust; provided, however, that any permitted successor of the Issuer under the Indenture may succeed to the Issuer's ownership of the Common Securities, (ii) not voluntarily dissolve, windup or terminate the Trust, except in connection with the distribution of Debentures upon a Dissolution Event or otherwise, and in connection with certain mergers, consolidations or amalgamations permitted by the Declaration, (iii) timely perform its duties as sponsor of the Trust, (iv) use its reasonable efforts to cause the Trust (a) to remain a business trust, except in connection with the distribution of Debentures as provided in the Declaration, the redemption of the Trust Securities or in connection with certain mergers, consolidations or amalgamations as permitted by the Declaration, and (b) otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes, and (v) use its reasonable efforts to cause each holder of Trust Securities to be treated as owning an individual beneficial interest in the Debentures. This covenant is intended solely for the benefit of the Holders of the Debentures issued pursuant to this Second Supplemental Indenture and shall not be applicable to the Securities of any other series issued pursuant to the Indenture.

ARTICLE IX

DEFAULT

SECTION 9.1 Additional Event of Default.

There is hereby established as an additional Event of Default (as contemplated by Section 5.1(7) of the Indenture) the following:

In the event the Debentures are issued and sold to the Property Trustee in connection with the issuance of Trust Securities by the Trust, the Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of the Debentures to holders of Trust Securities in liquidation or redemption of their interests in the Trust, (ii) the redemption of all or part of the outstanding Trust Securities of the Trust or (iii) certain mergers, consolidations or amalgamations of the Trust, each as permitted by the Declaration of the Trust.

The foregoing Event of Default is intended solely for the benefit of the Holders of the Debentures issued pursuant to this Second Supplemental Indenture and shall not be applicable to any other series of Securities heretofore or hereafter issued pursuant to the Indenture.

SECTION 9.2 Limitations on Waivers and Consents.

(a) Notwithstanding anything to the contrary contained in Section 5.7 of the Indenture, if the Debentures are held by the Trust or by the Property Trustee, a waiver of a past default or any modification to a waiver of a past default shall not be effective until the holders of a majority in liquidation amount of Trust Securities shall have consented to such waiver or modification; provided, however, that if the consent of the Holder of each Outstanding Debenture is required in connection with such waiver or modification, such waiver or modification shall not be effective until each holder of the Trust Securities shall have consented to such waiver or modification.

(b) Except for any supplemental indenture provided under Section 8.1 of the Indenture and notwithstanding anything to the contrary contained in Section 3.8 of the Indenture, if the Debentures are held by the Trust or by the Property Trustee, a supplemental indenture shall not be effective until the holders of a majority in liquidation amount of Trust Securities shall have consented to such supplemental indenture; provided, however, that if the consent of the Holder of each Outstanding Debenture is required in connection with a supplemental indenture, such supplemental indenture shall not be effective until each holder of the Trust Securities shall have consented to such supplemental indenture.

SECTION 9.3 Acknowledgment of Rights.

The Issuer acknowledges that, with respect to any Debentures held either by the Trust or by the Property Trustee, if the Property Trustee fails to enforce its rights under the Indenture, this Second Supplemental Indenture or the Debentures as the Holder of the Debentures held as the assets of the Trust, any record holder of Capital Securities may institute legal proceedings directly against the Issuer to enforce the Property Trustee's rights under the Indenture, this Second Supplemental Indenture or the Debentures without first instituting any legal proceedings against such Property Trustee or any other person or entity. Notwithstanding the foregoing, if an Event of Default under the Declaration has occurred and is continuing and such event is attributable to the failure of the Issuer to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the applicable redemption date), the Issuer acknowledges that a record holder of Capital Securities may institute a proceeding directly against the Issuer for enforcement of payment to the record holder of the Preferred Securities of the principal of or interest on the Debentures on or after the respective due date specified in the Debentures, and the amount of payment will be based on the holder's pro rata share of the amount due and owing on all the Capital Securities.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Ratification of Indenture.

The Indenture, as supplemented by this Second Supplemental Indenture, is in all respects ratified and confirmed, and this Second Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

SECTION 10.2 Trustee Not Responsible for Recitals.

The recitals contained herein and in the Debentures, except for the Trustee's certificate of authentication, shall be taken as the statements of the Issuer and not of the Trustee, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture or of the Debentures.

SECTION 10.3 Governing Law.

This Second Supplemental Indenture and each Debenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State, except as may otherwise be required by mandatory provisions of law.

SECTION 10.4 Separability.

In case any one or more of the provisions contained in this Second Supplemental Indenture or in the Debentures shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Second Supplemental Indenture or of the Debentures, but this Second Supplemental Indenture and the Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

SECTION 10.5 Counterparts.

This Second Supplemental Indenture may be executed in any number of counterparts each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 10.6 Effect of Headings.

The Article and Section headings herein and the Table of Contents hereto are for convenience only and shall not affect the construction hereof.

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

CONSECO, INC.

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick
Title: Executive Vice President

FLEET NATIONAL BANK, as Trustee

By: /s/ MICHAEL M. HOPKINS

Name: Michael M. Hopkins
Title: Vice President

CONSECO, INC.

8.70% SUBORDINATED DEFERRABLE INTEREST DEBENTURE

No. 1 DUE NOVEMBER 15, 2026 REGISTERED
\$335,100,000

Conseco, Inc., an Indiana corporation (the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to FLEET NATIONAL BANK, as Property Trustee under that certain Amended and Restated Declaration of Trust dated as of November 22, 1996, among the Trustees of Conseco Financing Trust II named therein, the Company and the holders from time to time of undivided beneficial interests in the assets of Conseco Financing Trust II, or registered assigns, the principal sum of Three Hundred Thirty-Five Million One Hundred Thousand Dollars on November 15, 2026 and to pay interest on said principal sum from November 27, 1996, or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, semiannually (subject to deferral as set forth herein) in arrears on May 15 and November 15 of each year commencing May 15, 1997, at the rate of 8.70% per annum until the principal hereof shall have become due and payable, and on any overdue principal and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded semiannually. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual period on the basis of the actual number of days elapsed per 30-day month. In the event that any date on which interest is payable on this Debenture is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the person in whose name this Debenture is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the Business Day next preceding such Interest Payment Date. Notwithstanding the foregoing, any interest that is payable on the Maturity Date shall be payable to the Person to whom principal payable at the Maturity Date shall be payable. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered Holders on such regular record date and may be paid to the Person in whose name this Debenture (or one or more Predecessor Security) is registered at the close of business on a special record date to be fixed in accordance with the provisions of Section 3.7(b) of the Indenture. The principal of and the interest on this Debenture shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Register. Notwithstanding the foregoing, so long as the Holder of this Debenture is the Property Trustee, the payment of the principal of and interest on this

Debenture will be made by wire transfer in immediately available funds at such place and to such account as may be designated by the Property Trustee. Payment of principal of the Debentures will only be made upon surrender of the Debentures to the Trustee or Paying Agent.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, and this Debenture is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Debenture, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Debenture shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Debenture are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: November 27, 1996.

CONSECO, INC.

By: /s/ STEPHEN C. HILBERT

*Stephen C. Hilbert,
Chairman of the Board, President and
Chief Executive Officer*

SEAL

Attest:

By: /s/ LAWRENCE W. INLOW

Lawrence W. Inlow, Secretary

CERTIFICATE OF AUTHENTICATION

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

FLEET NATIONAL BANK, as Trustee

By: /s/ MICHAEL M. HOPKINS

Authorized Signatory

This Debenture is one of a duly authorized series of Debentures of the Company (herein sometimes referred to as the "Debentures"), specified in the Indenture, all issued or to be issued in one or more series under and pursuant to an Indenture dated as of November 14, 1996, duly executed and delivered between the Company and Fleet National Bank, as Trustee (the "Trustee"), (as supplemented by the First Supplemental Indenture dated as of November 14, 1996, the "Base Indenture") as supplemented by the Second Supplemental Indenture dated as of November 22, 1996 between the Company and the Trustee (the Base Indenture as so supplemented, the "Indenture"), to which a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Debentures, and to all of which provisions the Holder of this Debenture by acceptance hereof, assents and agrees. By the terms of the Indenture, the Debentures are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Debentures is limited in aggregate principal amount as specified in said Second Supplemental Indenture.

The Company shall have the right to redeem this Debenture at the option of the Company, at any time and from time to time (an "Optional Redemption"), at a redemption price equal to 100% of the principal amount plus the Make-Whole Premium, if any, plus any accrued and unpaid interest, including any Compounded Interest, if any, to the date of such redemption (collectively the "Optional Redemption Price"). The Make-Whole Premium shall mean the excess, if any, of (i) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date on a semiannual basis at the Treasury Rate (as defined in the Indenture) plus 50 basis points over (ii) 100% of the principal amount of Debentures to be redeemed. Any redemption pursuant to this paragraph will be made upon not less than 30 nor more than 60 days' notice at the Optional Redemption Price.

If, at any time, a Tax Event (as defined below) shall occur or be continuing after receipt of a Dissolution Tax Opinion (as defined below) and either (a) the Regular Trustees and the Issuer shall have received an opinion (a "Redemption Tax Opinion") of a nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Issuer would be precluded from deducting the interest on the Debentures for United States federal income tax purposes even after the Debentures were distributed to the Holders of Capital Securities and Common Securities in liquidation of such holder's interest in the Trust as set forth in the Declaration of Trust or (b) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion (as defined below) cannot be delivered, the Issuer shall have the right at any time, upon not less than 30 nor more than 60 days' notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event; provided, however, that, if at that time there is available to the Issuer or the Trust the opportunity to eliminate, within such 90 day period the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure, which has no adverse effect on the Trust, the Issuer or the Holders of the Capital Securities, the Issuer or the Trust will pursue such measure in lieu of redemption and provided further that the Issuer shall have no right to redeem the Debentures while the Trust is pursuing any such Ministerial Action.

"Tax Event" means that the Regular Trustees shall have received an opinion of independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment, or change is effective or such pronouncement or decision is announced on or after the date of original issuance of the Preferred Securities, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days after the date thereof, subject to United States federal income tax with respect to interest accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days after the date thereof, subject to more than a de minimis amount of taxes, duties or other governmental charges, or (iii) interest payable to the Trust on the Debentures is not, or within 90 days of the date thereof, will not be deductible, in whole or in part, by the Company for United States federal income tax purposes.

A "No Recognition Opinion" means an opinion of nationally recognized independent tax counsel experienced in such matters, which may rely on published revenue rulings of the Internal Revenue Service, to the effect that all holders of the Trust Securities will not recognize gain or loss for United States federal income tax purposes as a result of the dissolution of the Trust and distribution of the Debentures.

If the Debentures are only partially redeemed by the Company pursuant to an Optional Redemption or a redemption pursuant to a Tax Event, the Debentures will be redeemed pro rata or by lot or in some other equitable manner determined by the Trustee.

In the event of redemption of this Debenture in part only, a new Debenture or Debentures of this series (for the unredeemed portion hereof) will be issued in the name of the Holder hereof upon the cancellation hereof.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Debentures may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and limitations provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Debentures of each series affected at the time outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Debentures; provided, however, that no such supplemental indentures shall (i) change the Stated Maturity of the principal or any installment of principal or any installment of interest (other than as contemplated herein), or reduce the amount of principal or interest thereon or any premium payable upon redemption or repayment thereof, or change the Place of Payment or currency in which principal or any interest

is payable, or impair the right to institute suit for the enforcement of any payment of the principal and any premium and interest without the consent of the Holder of each Debenture so affected; (ii) reduce the aforesaid percentage of Debentures, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of each Debenture then outstanding and affected thereby; (iii) change any obligation of the Company to maintain an office or agency in the Place of Payment; or (iv) modify any of the above provisions. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Debentures of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Debentures of such series, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal or interest on the Debentures or a default in respect of a covenant or provision of the Indenture or the Debentures of such series which cannot be modified or amended without the consent of each Holder of Debentures of such series. Any such consent or waiver by the registered Holder of this Debenture (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Debenture and of any Debentures issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Debenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Debenture at the time and place and at the rate and in the money herein prescribed.

The Company shall have the right at any time during the term of the Debentures from time to time to extend the interest payment period of such Debentures for up to 10 consecutive semiannual periods not to extend beyond the Maturity Date of the Debentures (an "Extended Interest Payment Period"), at the end of which period the Company shall pay all interest then accrued and unpaid (together with interest thereon at the rate specified for the Debentures to the extent that payment of such interest is enforceable under applicable law). In the event that the Company exercises the right to defer interest payments, then, prior to the payment of all accrued interest on outstanding Debentures, (a) the Company shall not declare or pay dividends on, or make a distribution with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any of its capital stock, (b) the Company shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities issued by the Company that rank *pari passu* with or junior to the Debentures and (c) the Company shall not make any guarantee payments with respect to the foregoing (other than pursuant to the Securities Guarantees); provided, however, that restriction (a) above does not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid and (ii) purchases or acquisitions of shares of Company Common Stock in connection with the satisfaction by the Company of its obligation under any employee benefit plans. Before the termination of any such Extended Interest Payment Period, the Company may further extend such Extended Interest Payment Period, provided that such Extended Interest Payment Period together with all such previous and further extensions thereof

shall not exceed 10 consecutive semiannual periods and shall not extend beyond the Maturity Date of the Debentures. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extended Interest Payment Period.

At any time the Company will have the right to dissolve the Trust and cause the Debentures to be distributed to the holders of the Trust Securities in liquidation of the Trust.

As provided in the Indenture and subject to certain limitations therein set forth, this Debenture is transferable by the registered Holder hereof on the Register of the Company, upon surrender of this Debenture for registration of transfer at the Corporate Trust Office of the Trustee accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Debentures of authorized denominations and for the same aggregate principal amount and series will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Debenture, the Company, the Trustee, any paying agent and any Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Registrar) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Debenture or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

As provided in the Indenture and subject to certain limitations herein and therein set forth, Debentures of this series so issued are exchangeable for a like aggregate principal amount of Debentures of this series of a different authorized denomination, as requested by the Holder surrendering the same. All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company and the Holder agree (i) that for United States federal, state and local tax purposes it is intended that the Debenture constitute indebtedness and (ii) to file all United States federal, state and local tax returns and reports on such basis (unless the Company or the Holder, as the case may be, shall have received an opinion of independent nationally recognized tax counsel to the effect that as a result of a change in law after the date of the issuance of the Debenture the Company or the Holder, as the case may be, is prohibited from filing on such basis).

AMENDED AND RESTATED

DECLARATION OF TRUST

CONSECO FINANCING TRUST II

Dated as of November 22, 1996

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CROSS - REFERENCE TABLE *

Section of Trust Indenture Act of 1939, as amended	Section of Declaration
310 (a).	5.3 (a)
310 (c).	Inapplicable
311 (c).	Inapplicable
312 (a).	2.2 (a)
312 (b).	2.2 (b)
313.	2.3
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314 (d).	Inapplicable
314 (f).	Inapplicable
315 (a).	3.9 (b)
315 (c).	3.9 (a)
315 (d).	3.9 (a)
316 (a).	Annex I
316 (c).	3.6 (e)

* This Cross - Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.

AMENDED AND RESTATED DECLARATION OF TRUST

AMENDED AND RESTATED DECLARATION OF TRUST, including Annex I and all exhibits attached hereto ("Declaration"), dated and effective as of November 22, 1996, by the Trustees (as defined herein), the Sponsor (as defined herein) and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to this Declaration;

WHEREAS, four of the Trustees and the Sponsor established Conseco Financing Trust II (the "Trust"), a trust under the Delaware Business Trust Act pursuant to a Declaration of Trust dated as of October 28, 1996 (the "Original Declaration") and a Certificate of Trust filed with the Secretary of State of the State of Delaware on October 28, 1996 (the "Certificate of Trust"), for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Debentures (as defined herein) of the Debenture Issuer (as defined herein);

WHEREAS, as of the date hereof, no beneficial interests in the Trust have been issued;

WHEREAS, all of the Trustees and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration; and

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a business trust under the Business Trust Act and that this Declaration constitutes the governing instrument of such business trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I INTERPRETATION AND DEFINITIONS

SECTION 1.1 Interpretation and Definitions.

Unless the context otherwise requires:

- (a) capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Declaration has the same meaning throughout;
- (c) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time;
- (d) all references in this Declaration to Articles and Sections are to Articles and Sections of this Declaration unless otherwise specified;

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and

(f) a reference to the singular includes the plural and vice versa.

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

"Authorized Officer" of a Person means any Person that is authorized to bind such Person.

"Base Indenture" means the Indenture dated as of November 14, 1996 among the Debenture Issuer and the Debenture Trustee as supplemented by the First Supplemental Indenture dated as of November 14, 1996.

"Book Entry Interest" means a beneficial interest in a Global Certificate, ownership and transfers of which shall be maintained and made through book entries by a Clearing Agency as described in Section 9.4.

"Business Day" means any day other than a day on which banking institutions in New York, New York or in the city of the principal Corporate Trust Office of either the Property Trustee or the Debenture Trustee are authorized or required by law to close.

"Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Capital Securities Guarantee" means the guarantee agreement of the Sponsor in respect of the Capital Securities.

"Capital Security" has the meaning specified in Section 7.1.

"Capital Security Beneficial Owner" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

"Capital Security Certificate" means a certificate representing a Capital Security.

"Certificate" means a Common Security Certificate or a Capital Security Certificate.

"Clearing Agency" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Capital Securities and in whose name or in the name of a nominee of that organization shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Capital Securities.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book entry transfers and pledges of securities deposited with the Clearing Agency.

"Closing Date" means the date on which the Capital Securities are sold pursuant to the terms of the Underwriting Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Declaration, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Declaration containing such reference.

"Commission" means the Securities and Exchange Commission.

"Common Securities Guarantee" means the guarantee agreement of the Sponsor in respect of the Common Securities.

"Common Security" has the meaning specified in Section 7.1.

"Common Security Certificate" means a definitive certificate in fully registered form representing a Common Security.

"Company Indemnified Person" means (a) any Regular Trustee; (b) any Affiliate of any Regular Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Regular Trustee or any Affiliate thereof; or (d) any officer, employee or agent of the Trust or its Affiliates.

"Corporate Trust Office" means the office of the Property Trustee at which the corporate trust business of the Property Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Declaration is located at 777 Main Street, Hartford, CT 06115, Attention: Corporate Trust Administration.

"Covered Person" means (a) any officer, director, shareholder, partner, member, representative, employee or agent of (i) the Trust or (ii) the Trust's Affiliates; and (b) any Holder of Securities.

"Debenture Issuer" means Consecro, Inc. in its capacity as issuer of the Debentures under the Indenture.

"Debenture Trustee" means Fleet National Bank, as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"Debentures" means the series of subordinated deferrable interest debentures to be issued by the Debenture Issuer under the Indenture to be held by the Property Trustee.

"Definitive Capital Security Certificates" has the meaning set forth in Section 9.4.

"Delaware Trustee" has the meaning set forth in Section 5.2.

"Direction" by a Person means a written direction signed:

(a) if the Person is a natural person, by that Person; or

(b) in any other case, in the name of such Person by one or more Authorized Officers of that Person.

"Distribution" means a distribution payable to Holders of Securities in accordance with Section 6.1.

"DTC" means The Depository Trust Company, the initial Clearing Agency.

"Event of Default" in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Debentures.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

"Fiduciary Indemnified Person" has the meaning set forth in Section 10.4(b).

"Fiscal Year" has the meaning set forth in Section 11.1.

"Global Certificate" has the meaning set forth in Section 9.4.

"Holder" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act, PROVIDED, HOWEVER, that in determining whether the Holders of the requisite liquidation amount of Preferred Securities have voted on any matter provided for in this Declaration, then for the purpose of such determination only (and not for any other purpose hereunder), if the Capital Securities remain in the form of one or more Global Certificates, the term "Holders" shall mean the holder of the Global Certificate acting at the direction of the Capital Security Beneficial Owners.

"Indemnified Person" means a Company Indemnified Person or a Fiduciary Indemnified Person.

"Indenture" means the Base Indenture and any indenture supplemental thereto pursuant to which the Debentures are to be issued.

"Investment Company" means an investment company as defined in the Investment Company Act and the regulations promulgated thereunder.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"Investment Company Event" has the meaning set forth in Annex I.

"Legal Action" has the meaning set forth in Section 3.6(g).

"List of Holders" has the meaning specified in Section 2.2(a).

"Majority in Liquidation Amount" means, except as provided in the terms of the Preferred Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Preferred Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Officers' Certificate" means, with respect to any Person (other than Regular Trustees who are natural persons), a certificate signed by two Authorized Officers of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with ;

provided, that the term "Officers' Certificate" when used with reference to Regular Trustees who are natural persons shall mean a certificate signed by two of the Regular Trustees which otherwise satisfies the foregoing requirements.

"Paying Agent" has the meaning specified in Section 3.8(h).

"Payment Amount" has the meaning specified in Section 6.1.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Pricing Agreement" means the pricing agreement between the Trust, the Debenture Issuer and the underwriter designated by the Regular Trustees with respect to the offer and sale of the Capital Securities.

"Property Trustee" means the Trustee meeting the eligibility requirements set forth in Section 5.3

"Property Trustee Account" has the meaning set forth in Section 3.8(c).

"Quorum" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both of them.

"Regular Trustee" means any Trustee other than the Property Trustee and the Delaware Trustee.

"Related Party" means, with respect to the Sponsor, any direct or indirect wholly owned subsidiary of the Sponsor or any Person that owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

"Responsible Officer" means, with respect to the Property Trustee, any officer within the Corporate Trust Office of the Property Trustee, including any vice-president, any assistant vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the Corporate Trust Office of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Rule 3a-5" means Rule 3a-5 under the Investment Company Act or any successor rule thereunder.

"Securities" means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"Securities Guarantees" means the Common Securities Guarantee and the Capital Securities Guarantee.

"Sponsor" means Consecro, Inc., an Indiana corporation, or any successor entity in a merger, consolidation or amalgamation, in its capacity as sponsor of the Trust.

"Successor Delaware Trustee" has the meaning specified in Section 5.7(b).

"Successor Entity" has the meaning specified in Section 3.15(b)(i).

"Successor Property Trustee" has the meaning specified in Section 5.7(b).

"Successor Securities" has the meaning specified in Section 3.15(b) (i)(B).

"Super Majority" has the meaning set forth in Section 2.6(a) (ii).

"Tax Event" has the meaning set forth in Annex I.

"10% in Liquidation Amount" means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Treasury Regulations" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

"Trustee" or "Trustees" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"Underwriting Agreement" means the Underwriting Agreement for the offering and sale of Capital Securities between the Trust, the Debenture Issuer and the underwriter designated by the Regular Trustees.

ARTICLE II TRUST INDENTURE ACT

SECTION 2.1 Trust Indenture Act; Application.

(a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions.

(b) The Property Trustee shall be the only Trustee which is a Trustee for the purposes of the Trust Indenture Act.

(c) If and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(d) The application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

SECTION 2.2 Lists of Holders of Securities.

(a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee with a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders"), (i) within one Business Day after January 1 and June 30 of each year and current as of such date, and (ii) at any other time, within 30 days of receipt by the Trust of a written request from the Property Trustee for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Property Trustee; PROVIDED THAT neither the Sponsor nor the Regular Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Regular Trustees on behalf of the Trust. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity) provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under, and shall be entitled to the benefits of, Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.3 Reports by the Property Trustee.

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the issuance of the Capital Securities), the Property Trustee shall provide to the Holders of the Capital Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 Periodic Reports to the Property Trustee.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 (if any) of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

SECTION 2.5 Evidence of Compliance with Conditions Precedent.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6 Events of Default; Waiver.

(a) The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote, on behalf of the Holders of all of the Capital Securities, waive any past Event of Default in respect of the Capital Securities and its consequences, provided that, if the underlying Event of Default under the Indenture:

(i) is not waivable under the Indenture, the Event of Default under the Declaration shall also not be waivable; or

(ii) requires the consent or vote of greater than a majority in principal amount of the holders of the Debentures (a "Super Majority") to be waived under the Indenture, the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Capital Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding.

The foregoing provisions of this Section 2.6(a) shall be in lieu of

Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Capital Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration and the Capital Securities, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Capital Securities or impair any right consequent thereon.

(b) The Holders of a Majority in Liquidation Amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Event of Default in respect of the Common Securities and its consequences, provided that, if the underlying Event of Default under the Indenture:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this

Section 2.6(b), the Event of Default under the Declaration shall also not be waivable; or

(ii) requires the consent or vote of a Super Majority to be waived under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 2.6(b), the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and the consequences thereof until all Events of Default with respect to the Capital Securities have been cured, waived or otherwise eliminated, and until such Events of Default with respect to the Capital Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Capital Securities and only the Holders of the Capital Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.6(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.6(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Event of Default under the Indenture by the Property Trustee at the direction of the Holders of the Capital Securities constitutes a waiver of the corresponding Event of Default with respect to the Capital Securities under this Declaration. The foregoing provisions of this Section 2.6(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

SECTION 2.7 Event of Default; Notice.

(a) The Property Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all defaults with respect to the Securities actually known to a Responsible Officer of the Property Trustee, unless such defaults have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 2.7(a) being hereby defined to be an Event of Default as defined in the Indenture, not including any periods of grace provided for therein and irrespective of the giving of any notice provided therein); provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures or in the payment of any sinking fund installment established for the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Property Trustee shall not be deemed to have knowledge of any default except:

(i) a default under Sections 5.1(1) and 5.1(2) of the Indenture; or

(ii) any default as to which the Property Trustee shall have received written notice or of which a Responsible Officer of the Property Trustee charged with the administration of this Declaration shall have actual knowledge.

ARTICLE III ORGANIZATION

SECTION 3.1 Name and Organization.

The Trust hereby created is named "Conseco Financing Trust II" as such name may be modified from time to time by the Regular Trustees following written notice to the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.2 Office.

The address of the principal office of the Trust is 11825 North Pennsylvania Street, Carmel, Indiana 46032. On ten Business Days written notice to the Holders of Securities, the Regular Trustees may designate another principal office.

SECTION 3.3 Purpose.

The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and use the gross proceeds from such sale to acquire the Debentures, and (b) except as otherwise limited herein, to engage in only those other activities necessary, appropriate, convenient or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

The Trust will be classified as a grantor trust for United States federal income tax purposes under Subpart E of Subchapter J of the Code, pursuant to which the owners of the Capital Securities and the Common Securities will be the owners of the Trust for United States federal income tax purposes, and such owners will include directly in their gross income the income, gain, deduction or loss of the Trust as if the Trust did not exist. By the acceptance of this Trust, none of the Trustees, the Sponsor, the Holders of the Capital Securities or Common Securities or the Capital Securities Beneficial Owners will take any position for United States federal income tax purposes which is contrary to the classification of the Trust as a grantor trust.

SECTION 3.4 Authority.

Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee on behalf of the Trust in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

SECTION 3.5 Title to Property of the Trust.

Except as provided in Section 3.8 with respect to the Debentures and the Property Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

SECTION 3.6 Powers and Duties of the Regular Trustees.

The Regular Trustees shall have the exclusive power, duty and authority to cause the Trust to engage in the following activities:

- (a) to issue and sell the Capital Securities and the Common Securities in accordance with this Declaration; provided, however, that the Trust may issue no more than one series of Capital Securities and no more than one series of Common Securities, and, provided further, that there shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to a one-time, simultaneous issuance of both Capital Securities and Common Securities on the Closing Date;
- (b) in connection with the issue and sale of the Capital Securities, at the direction of the Sponsor, to:
 - (i) execute and file with the Commission a registration statement on Form S-3 prepared by the Sponsor, including any amendments thereto, pertaining to the Capital Securities (and any other securities of the Sponsor which the Sponsor may desire to include in such registration statement);
 - (ii) execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary, in order to qualify or register all or part of the Capital Securities in any State in which the Sponsor has determined to qualify or register such Capital Securities for sale;

- (iii) execute and file an application, prepared by the Sponsor, to the New York Stock Exchange, Inc. or any other national stock exchange or the Nasdaq Stock Market's National Market System for listing upon notice of issuance of any Capital Securities;
- (iv) execute and file with the Commission a registration statement on Form 8-A, including any amendments thereto, prepared by the Sponsor, relating to the registration of the Capital Securities under Section 12(b) of the Exchange Act; and
- (v) execute and enter into the Underwriting Agreement and Pricing Agreement providing for the sale of the Capital Securities;
- (c) to acquire the Debentures with the proceeds of the sale of the Capital Securities and the Common Securities; provided, however, that the Regular Trustees shall cause legal title to the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Capital Securities and the Holders of the Common Securities;
- (d) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Tax Event; provided that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining from taking any action in relation to a Tax Event;
- (e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of Section 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Capital Securities and Holders of Common Securities as to such actions and applicable record dates;
- (f) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of this Declaration and the Securities;
- (g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.8(e), the Property Trustee has the exclusive power to bring such Legal Action;
- (h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants and pay reasonable compensation for such services;
- (i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate required by Section 314(a)(4) of the Trust Indenture Act to the Property Trustee, which certificate may be executed by any Regular Trustee;

(k) to incur expenses that are necessary, incidental or desirable to carry out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities;

(m) to give prompt written notice to the Holders of the Securities of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Debentures as authorized by the Indenture;

(n) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Capital Securities or to enable the Trust to effect the purposes for which the Trust was created;

(o) to take any action, not inconsistent with this Declaration or with applicable law, that the Regular Trustees determine in their discretion to be necessary or desirable in carrying out the purposes and functions of the Trust as set out in Section 3.3 or the activities of the Trust as set out in this Section 3.6, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified for United States federal income tax purposes as a grantor trust; and

(iii) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes, provided that such action does not adversely affect the interests of Holders;

(p) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust;

(q) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary, incidental or desirable to the foregoing;

(r) to give written notice to the Property Trustee of the rating assigned to the Capital Securities, from time to time, by a "nationally recognized statistical rating organization", as that term is defined for purposes of Rule 436(g)(2) under the Securities Act promptly after such assignment and after any change thereof.

The Regular Trustees must exercise the powers set forth in this Section 3.6 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Regular Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

Subject to this Section 3.6, the Regular Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.8.

Any expenses incurred by the Regular Trustees pursuant to this Section 3.6 shall be reimbursed by the Debenture Issuer.

SECTION 3.7 Prohibition of Actions by the Trust and the Trustees.

(a) The Trust shall not, and the Regular Trustees and the Property Trustee shall cause the Trust not to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not and the Regular Trustees and the Property Trustee shall cause the Trust not to:

(i) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(ii) acquire any assets other than as expressly provided herein;

(iii) possess Trust property for other than a Trust purpose;

(iv) make any loans or incur any indebtedness other than loans represented by the Debentures;

(v) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever (except to the extent expressly authorized in this Declaration or by the terms of the Securities);

(vi) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or

(vii) other than as provided in this Declaration or by the terms of the Securities, (A) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (B) waive any past default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that for United States federal income tax purposes the Trust will not be classified as a grantor trust.

SECTION 3.8 Powers and Duties of the Property Trustee.

(a) The legal title to the Debentures shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Trust and the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.7. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Regular Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Trustee Account and make payments to the Holders of the Capital Securities and Holders of the Common Securities from the Property Trustee Account in accordance with Section 6.1. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Declaration. The Property Trustee Account shall be an account that is maintained with a banking institution the rating on whose long -term unsecured indebtedness is at least equal to the rating assigned to the Capital Securities by a "nationally recognized statistical rating organization", as that term is defined for purposes of Rule 436(g)(2) under the Securities Act;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Capital Securities and the Common Securities to the extent the Debentures are redeemed or mature; and

(iii) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of certain special events (as may be defined in the terms of the Securities) arising from a change in law or a change in legal interpretation or other specified circumstances pursuant to the terms of the Securities.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Declaration and the Securities.

(e) To the extent consistent with and not in contravention of the terms and provisions of this Declaration and the Indenture, with respect to any compromise, arbitration, or adjustment of claims or demands, the Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer of the Property Trustee has actual knowledge or the Property Trustee's duties and obligations under this Declaration or the Trust Indenture Act.

(f) The Property Trustee shall continue to serve as a Trustee until either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 5.7.

(g) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Debentures under the Indenture and, if an Event of Default actually known to a Responsible Officer of the Property Trustee occurs and is continuing, the Property Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to the terms of such Securities.

(h) The Property Trustee may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all Securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee. In the event the Preferred Securities do not remain in the form of one or more Global Certificates, the Property Trustee will act as Paying Agent and may designate an additional or substitute Paying Agent at any time.

(i) Subject to this Section 3.8, the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Regular Trustees set forth in Section 3.6.

The Property Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

SECTION 3.9 Certain Duties and Responsibilities of the Property Trustee.

(a) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) of which a Responsible Officer of the Property Trustee has actual knowledge, the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Declaration shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Declaration and the Securities and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Property Trustee; and

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the

Holders of not less than a Majority in Liquidation Amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Declaration;

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Declaration or indemnity reasonably satisfactory to the Property Trustee against such risk or liability is not reasonably assured to it;

(v) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Property Trustee Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Property Trustee under this Declaration and the Trust Indenture Act;

(vi) the Property Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the Debentures or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Sponsor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Trustee Account maintained by the Property Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Property Trustee be liable for any default or misconduct of the Regular Trustees or the Sponsor.

SECTION 3.10 Certain Rights of Property Trustee.

(a) Subject to the provisions of Section 3.9:

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

(ii) any direction or act of the Sponsor or the Regular Trustees contemplated by this Declaration shall be sufficiently evidenced by a Direction or an Officers' Certificate;

(iii) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Regular Trustees;

(iv) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or registration thereof;

(v) the Property Trustee may consult with counsel or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion, such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees. The Property Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(vi) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security and indemnity, reasonably satisfactory to the Property Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Property Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Property Trustee; provided that, nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Property Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Declaration;

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(viii) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(ix) any action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Property Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(x) whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in or accordance with such instructions; and

(xi) except as otherwise expressly provided by this Declaration, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration.

(b) No provision of this Declaration shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

SECTION 3.11 Delaware Trustee.

Notwithstanding any other provision of this Declaration other than Section 5.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

SECTION 3.12 Execution of Documents.

Unless otherwise determined by the Regular Trustees, and except as otherwise required by the Business Trust Act, any one Regular Trustee is authorized to execute on behalf of the Trust any documents that the Regular Trustees have the power and authority to execute pursuant to Section 3.6; provided, that, the registration statement referred to in Section 3.6(b)(i), including any amendments thereto, shall be signed by a majority of the Regular Trustees.

SECTION 3.13 Not Responsible for Recitals or Issuance of Securities.

The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

SECTION 3.14 Duration of Trust.

The Trust, unless terminated pursuant to the provisions of Article VIII hereof, shall have existence for fifty-five (55) years from the date hereof.

SECTION 3.15 Mergers.

(a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other body, except as described in Section 3.15(b) and (c).

(b) The Trust may, with the consent of the Regular Trustees or, if there are more than two, a majority of the Regular Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State; provided that:

(i) such successor entity (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Securities; or

(B) substitutes for the Capital Securities and Common Securities other securities having substantially the same terms as the Capital Securities and Common Securities, respectively (the "Successor Securities") so long as the Successor Securities rank the same as the Capital Securities and the Common Securities, respectively, rank with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) the Debenture Issuer expressly accepts a trustee of the Successor Entity that possesses the same powers and duties as the Property Trustee as the holder of the Debentures;

(iii) the Capital Securities or any Successor Securities (with respect to the Capital Securities) are listed, or any Successor Securities (with respect to the Capital Securities) will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Capital Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Capital Securities (including any Successor Securities of the Capital Securities) to be downgraded by any nationally recognized statistical rating organization then rating the Capital Securities at the request of the Sponsor;

(v) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the Capital Securities as a result of such merger, consolidation, amalgamation or replacement);

(vi) such Successor Entity has a purpose identical to that of the Trust;

(vii) prior to such merger, consolidation, amalgamation or replacement, the Sponsor has received an opinion of qualified independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the Capital Securities as a result of such merger, consolidation, amalgamation or replacement);

(B) following such merger, consolidation, amalgamation or replacement, neither the Trust nor the Successor Entity will be required to register as an Investment Company; and

(C) following such merger, consolidation, amalgamation or replacement, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes;

(viii) the Sponsor guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Capital Securities Guarantee and the Common Securities Guarantee, respectively; and

(ix) the Regular Trustees shall have furnished the Delaware Trustee and the Property Trustee at least 5 Business Days prior written notice of the consummation of such merger, consolidation, amalgamation or replacement; provided that failure to provide such notice shall not affect the validity of any such transaction.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

SECTION 3.16 Property Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Trust or any other obligor upon the Securities or the property of the Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Securities (or, if the Securities are original issue discount Securities, such portion of the liquidation amount as may be specified in the terms of such Securities) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

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

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

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

ARTICLE IV
SPONSOR

SECTION 4.1 Sponsor's Purchase of Common Securities.

On the Closing Date the Sponsor will purchase all of the Common Securities issued by the Trust, in an amount at least equal to 3% of the capital of the Trust, at the same time as the Capital Securities are sold.

SECTION 4.2 Responsibilities of the Sponsor.

In connection with the issue and sale of the Capital Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

- (a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 pertaining to the Capital Securities, including any amendments thereto (which registration statement may also include other securities of the Sponsor);
- (b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;
- (c) to prepare for filing by the Trust an application to the New York Stock Exchange, Inc. or any other national stock exchange or the Nasdaq Stock Market's National Market System for listing upon notice of issuance of any Capital Securities;
- (d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A relating to the registration of the Capital Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and
- (e) to negotiate the terms of the Underwriting Agreement and Pricing Agreement providing for the sale of the Capital Securities.

SECTION 4.3 Right to Dissolve Trust.

The Sponsor shall have the right at any time after the Closing Date to elect to dissolve the Trust in accordance with the terms of the Securities and to direct the Property Trustee to take such action as shall be necessary to distribute the Debentures to the Holders of the Securities in exchange for all of the Securities.

SECTION 4.4 Direct Right of Action.

Notwithstanding any provision of this Declaration to the contrary, to the extent permitted by applicable law, any Holder of Securities may enforce directly against the Sponsor the obligation of the Sponsor under the Indenture to duly and punctually pay the principal and interest when due under the Debentures and the Sponsor irrevocably waives any right or remedy to require that any such Holder take any action against the Trust or any other Person before proceeding against the Sponsor.

ARTICLE V TRUSTEES

SECTION 5.1 Number of Trustees.

The number of Trustees initially shall be five (5), and:

- (a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees; and
- (b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities or by written consent in lieu of such meeting.

provided that, if the Property Trustee does not also act as Delaware Trustee, the number of Trustees shall be at least three (3).

SECTION 5.2 Delaware Trustee.

If required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be:

- (a) a natural person who is a resident of the State of Delaware; or
- (b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law,

provided that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 5.3 Property Trustee; Eligibility.

- (a) There shall at all times be one Trustee which shall act as Property Trustee which shall:
 - (i) not be an Affiliate of the Sponsor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or other Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.3(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.7(c).

(c) If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holder of the Common Securities (as if it were the Obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

(d) The Capital Securities Guarantee shall be deemed to be specifically described in this Declaration for purposes of clause (i) of the first provision contained in Section 310(b) of the Trust Indenture Act.

SECTION 5.4 Regular Trustees.

(a) Except as expressly set forth in this Declaration and except if a meeting of the Regular Trustees is called with respect to any matter over which the Regular Trustees have power to act, any power of the Regular Trustees may be exercised by, or with the consent of, any one such Regular Trustee.

(b) Unless otherwise determined by the Regular Trustees, and except as otherwise required by the Business Trust Act or applicable law, any one Regular Trustee is authorized to execute on behalf of the Trust any documents which the Regular Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6, provided, that, the registration statement referred to in Section 3.6, including any amendments thereto, shall be signed by a majority of the Regular Trustees; and

(c) a Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Regular Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6.

SECTION 5.5 Certain Qualifications of Regular Trustees and Delaware Trustee Generally.

Each Regular Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

SECTION 5.6 Initial Trustees.

The initial Regular Trustees shall be: Rollin M. Dick, Stephen C. Hilbert and Lawrence W. Inlow.

The initial Property Trustee shall be: Fleet National Bank.

The initial Delaware Trustee shall be: First Union Bank of Delaware.

In the event that a national banking association, with the name "First Union Trust Company, National Association" or any other name, succeeds, as contemplated, to all or substantially all the corporate trust business of First Union Bank of Delaware, such successor entity shall automatically be deemed to be the Delaware Trustee, effective as of the consummation of such succession, with the same effect as if it had executed this Declaration on the Closing Date, upon delivery to the Sponsor and the Regular Trustees of an instrument, in form and substance reasonably satisfactory to the Sponsor and the Regular Trustees accepting the responsibilities hereunder as Delaware Trustee and agreeing to be bound by all of the provisions hereof applicable to the Delaware Trustee.

SECTION 5.7 Appointment, Removal and Resignation of Trustees.

(a) Subject to Section 5.7(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Sponsor; and

(ii) after the issuance of any Securities, by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities.

(b) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.7(a) until a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.3 (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees and the Sponsor. The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.7(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.5 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees and the Sponsor.

(c) A Trustee appointed to office shall hold office until his or its successor shall have been appointed, until his death or its dissolution or until his or its removal or resignation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; provided, however, that:

(i) No such resignation of the Trustee that acts as the Property Trustee shall be effective:

(A) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Sponsor and the resigning Property Trustee; or

(B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.7.

(e) If no Successor Property Trustee or Successor Delaware Trustee, as the case may be, shall have been appointed and accepted appointment as provided in this Section 5.7 within 60 days after delivery to the Sponsor and the Trust of an instrument of resignation, the resigning Property Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee, as applicable. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(g) Any successor to a Regular Trustee shall be an officer, director, employer or affiliate of the Sponsor.

SECTION 5.8 Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Regular Trustees or, if there are more than two, a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.7.

SECTION 5.9 Effect of Vacancies.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of a Regular Trustee in accordance with Section 5.7, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

SECTION 5.10 Meetings.

If there is more than one Regular Trustee, meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meetings of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees. In the event there is only one Regular Trustee, any and all action of such Regular Trustee shall be evidenced by a written consent of such Regular Trustee.

SECTION 5.11 Delegation of Power.

(a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any natural person over the age of 21 his, her or its power for the purpose of executing any documents contemplated in Section 3.6, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing.

(b) The Regular Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 5.12 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Property Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Property Trustee or the Delaware Trustee, as the case may be, shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Property Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Property Trustee or the Delaware Trustee, as the case may be, hereunder, provided such corporation shall be otherwise qualified and eligible under this Article without the execution or filing of any paper or any further act on the part of any of the parties hereto.

ARTICLE VI DISTRIBUTIONS

SECTION 6.1 Distributions.

Holders shall receive Distributions (as defined herein) in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Capital Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Interest (as defined in the Indenture)), premium and/or principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to make a distribution (a "Distribution") of the Payment Amount to Holders.

ARTICLE VII ISSUANCE OF SECURITIES

SECTION 7.1 General Provisions Regarding Securities.

(a) The Regular Trustees shall on behalf of the Trust issue one class of preferred securities (the "Capital Securities") representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I, as such Annex I may be amended from time to time in accordance with the provisions of this Declaration and one class of common securities (the "Common Securities") representing undivided beneficial interests in the assets of

the Trust having such terms as are set forth in Annex I, as such Annex I may be amended from time to time in accordance with the provisions of this Declaration. The Trust shall issue no securities or other interests in the assets of the Trust other than the Capital Securities and the Common Securities.

(b) The Certificates shall be signed on behalf of the Trust by a Regular Trustee. Such signature shall be the manual or facsimile signature of any present or any future Regular Trustee. In case any Regular Trustee of the Trust who shall have signed any of the Certificates shall cease to be such Regular Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Regular Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Certificate, shall be the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage.

(c) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(d) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(e) Every Person, by virtue of having become a Holder or a Capital Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration and the terms of the Securities, the Securities Guarantees, the Indenture and the Debentures.

ARTICLE VIII TERMINATION OF TRUST

SECTION 8.1 Termination of Trust.

(a) The Trust shall dissolve upon the earlier of:

(i) the bankruptcy of the Holder of the Common Securities or the Sponsor;

(ii) the filing of a certificate of dissolution or its equivalent with respect to the Holder of the Common Securities or the Sponsor; the revocation of the Holder of the Common Securities' or the Sponsor's charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;

- (iii) upon the entry of a decree of judicial dissolution of the Holder of the Common Securities, the Sponsor or the Trust;
 - (iv) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;
 - (v) the occurrence and continuation of a Tax Event pursuant to which the Trust shall have been dissolved in accordance with the terms of the Securities and all of the Debentures shall have been distributed to the Holders of Securities in exchange for all of the Securities;
 - (vi) before the issuance of any Securities, when all of the Regular Trustees and the Sponsor shall have consented to dissolution of the Trust;
 - (vii) the distribution of the Debentures from the Trust to the Holders of Securities in exchange for all of the Securities and in liquidation of the Trust; or
 - (viii) the expiration of the term of the Trust as set forth in Section 3.14.
- (b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a) and upon completion of the winding up of the Trust, the Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware and thereupon the Trust shall terminate.
- (c) The provisions of Section 3.9 and Article X shall survive the termination of the Trust.

ARTICLE IX TRANSFER OF INTERESTS

SECTION 9.1 Transfer of Securities.

- (a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.
- (b) Subject to this Article IX, Capital Securities shall be freely transferable.
- (c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor; provided that, any such transfer is subject to the condition precedent that the transferor obtain the written opinion of qualified independent counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

(i) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and

(ii) the Trust would be an Investment Company or the transferee would become an Investment Company.

SECTION 9.2 Transfer and Exchange of Certificates.

The Regular Trustees shall provide for the registration of Certificates and of transfers or exchanges of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Regular Trustees may require) in respect of any tax or other government charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Regular Trustees shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Upon surrender for exchange of any Certificate, the Regular Trustees shall cause one or more new Certificates in the same aggregate liquidation amount as the Certificate surrendered for exchange to be issued in the name of the Holder of the Certificate so surrendered. Every Certificate surrendered for registration of transfer or for exchange shall be accompanied by a written instrument of transfer in form satisfactory to the Regular Trustees duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer or for exchange shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

SECTION 9.3 Deemed Security Holders.

The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust shall have actual or other notice thereof.

SECTION 9.4 Book Entry Interests.

Unless otherwise specified in the terms of the Capital Securities, the Capital Securities Certificates, on original issuance, will be issued in the form of one or more fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Capital Security Beneficial Owner will receive a definitive Capital Security

Certificate representing such Capital Security Beneficial Owner's interests in such Global Certificates, except as provided in Section 9.7. Unless and until definitive, fully registered Capital Security Certificates (the "Definitive Capital Security Certificates") have been issued to the Capital Security Beneficial Owners pursuant to Section 9.7:

(a) the provisions of this Section 9.4 shall be in full force and effect;

(b) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Capital Securities and the sole holder of the Global Certificates and shall have no obligation to the Capital Security Beneficial Owners;

(c) to the extent that the provisions of this Section 9.4 conflict with any other provisions of this Declaration, the provisions of this Section 9.4 shall control; and (d) the rights of the Capital Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Capital Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants.

SECTION 9.5 Notices to Clearing Agency.

Whenever a notice or other communication to the Capital Security Holders is required under this Declaration, unless and until Definitive Capital Security Certificates shall have been issued to the Capital Security Beneficial Owners pursuant to Section 9.7, the Regular Trustees or the Property Trustee, if the Property Trustee is specifically required to give such notice, shall give all such notices and communications specified herein to be given to the Capital Security Holders to the Clearing Agency, and shall have no notice obligations to the Capital Security Beneficial Owners.

SECTION 9.6 Appointment of Successor Clearing Agency.

If any Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities or if the Regular Trustees elect to have another Clearing Agency serve as securities depository with respect to the Capital Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Capital Securities.

SECTION 9.7 Definitive Capital Security Certificates.

If:

- (a) a Clearing Agency elects to discontinue its services as securities depository with respect to the Capital Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.6; or
- (b) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Capital Securities, then:
 - (i) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Capital Securities; and
 - (ii) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause Definitive Capital Security Certificates to be delivered to the Capital Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, said instructions of the Clearing Agency. The Definitive Capital Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which Capital Securities may be listed, or to conform to usage.

SECTION 9.8 Mutilated, Destroyed, Lost or Stolen Certificates.

If:

- (a) any mutilated Certificates should be surrendered to the Regular Trustees, or if the Regular Trustees shall receive evidence to their satisfaction of the destruction, loss or theft of any Certificate; and
- (b) there shall be delivered to the Regular Trustees such security or indemnity as may be required by them to keep each of them, the Sponsor and the Trust harmless,

then, in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any Regular Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Regular Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

ARTICLE X
LIMITATION OF LIABILITY OF
HOLDERS OF SECURITIES, TRUSTEES OR OTHERS

SECTION 10.1 Liability.

- (a) Except as expressly set forth in this Declaration, the Securities Guarantees and the terms of the Securities, the Sponsor shall not be:
 - (i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; and
 - (ii) be required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.
- (b) The Holder of the Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.
- (c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of the Capital Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.2 Exculpation.

- (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

SECTION 10.3 Fiduciary Duty.

(a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between any Covered Persons; or

(ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Declaration or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise.

(c) Whenever in this Declaration an Indemnified Person is permitted or required to make a decision:

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

SECTION 10.4 Indemnification and Compensation.

(a) (i) The Sponsor shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Company Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Sponsor shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) Any indemnification under paragraphs (i) and (ii) of this Section

10.4(a) (unless ordered by a court) shall be made by the Sponsor only as authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Regular Trustees by a majority vote of a

quorum consisting of such Regular Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Regular Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Common Security Holder of the Trust.

(iv) Expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a) shall be paid by the Sponsor in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Sponsor as authorized in this Section 10.4 (a). Notwithstanding the foregoing, no advance shall be made by the Sponsor if a determination is reasonably and promptly made (i) by the Regular Trustees by a majority vote of a quorum of disinterested Regular Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Regular Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Regular Trustees, counsel or the Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Regular Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Capital Security Holders.

(v) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 10.4(a) shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the Debenture Issuer or Capital Security Holders of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 10.4(a) shall be deemed to be provided by a contract between the Debenture Issuer and each Company Indemnified Person who serves in such capacity at any time while this Section 10.4(a) is in effect. Any repeal or modification of this Section 10.4(a) shall not affect any rights or obligations then existing.

(vi) The Debenture Issuer or the Trust may purchase and maintain insurance on behalf of any person who is or was a Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Debenture Issuer would have the power to indemnify him against such liability under the provisions of this Section 10.4(a).

(vii) For purposes of this Section 10.4(a), references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, member, partner, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 10.4(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(viii) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 10.4(a) shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Company Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person. The obligation to indemnify as set forth in this Section 10.4(a) shall survive the satisfaction and discharge of this Declaration.

(b) The Debenture Issuer agrees to indemnify the (i) Property Trustee,

(ii) the Delaware Trustee, (iii) any Affiliate of the Property Trustee and the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Property Trustee and the Delaware Trustee (each of the Persons in (i) through

(iv) being referred to as a "Fiduciary Indemnified Person") for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability or expense incurred without negligence (or in the case of the Delaware Trustee, gross negligence) or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the satisfaction and discharge of this Declaration.

(c) The Debenture Issuer shall pay to the Property Trustee from time to time such reasonable compensation for its services as the Company and the Property Trustee shall agree in writing from time to time. The Property Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Debenture Issuer Shall reimburse the Property Trustee upon request for all reasonable out-of-pocket expenses incurred by it in connection with the performance of its duties under this Declaration except any such expense as may be attributed to its negligence or bad faith. Such expenses shall include the reasonable compensation and expenses of the Property Trustee's agents and counsel. The Debenture Issuer need not reimburse any expense incurred by the Property Trustee through negligence or bad faith.

SECTION 10.5 Outside Businesses.

Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

ARTICLE XI ACCOUNTING

SECTION 11.1 Fiscal Year.

The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year of the Trust by a firm of independent certified public accountants selected by the Regular Trustees.

(b) The Regular Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each

Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(c) The Regular Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority.

SECTION 11.3 Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Regular Trustees; provided, however, that the Property Trustee shall designate the signatories for the Property Trustee Account.

SECTION 11.4 Withholding.

The Trust and the Regular Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Regular Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claim over withholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding. To the extent the Property Trustee performs the functions provided for in this section, the Regular Trustees shall direct the Property Trustee in carrying out such functions.

ARTICLE XII
AMENDMENTS AND MEETINGS

SECTION 12.1 Amendments.

(a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may only be amended by:

(i) a written instrument approved and executed by the Regular Trustees (or, if there are more than two Regular Trustees, a majority of the Regular Trustees);

(ii) the Property Trustee if the amendment affects the rights, powers, duties, obligations or immunities of the Property Trustee; and

(iii) the Delaware Trustee if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee;

(b) no amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Property Trustee shall have first received an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities);

(ii) unless, in the case of any proposed amendment which affects the rights, powers, duties, obligations or immunities of the Property Trustee, the Property Trustee shall have first received:

(A) an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(iii) to the extent the result of such amendment would be to:

(A) cause the Trust to fail to continue to be classified for purposes of United States federal income taxation as a grantor trust;

(B) reduce or otherwise adversely affect the powers of the Property Trustee in contravention of the Trust Indenture Act; or

(C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(c) at such time after the Trust has issued any Securities that remain outstanding, any amendment that would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities;

(d) Section 9.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(e) Article IV shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities;

(f) the rights of the Holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities; and

(g) notwithstanding Section 12.1(c), this Declaration may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity;

(ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration;

(iii) add to the covenants, restrictions or obligations of the Sponsor;

(iv) to conform to any change in Rule 3a-5 or written change in interpretation or application of Rule 3a-5 by any legislative body, court, government agency or regulatory authority which amendment does not have a material adverse effect on the rights, preferences or privileges of the Holders; and

(v) to modify, eliminate and add to any provision of this Declaration, provided such modification, elimination or addition would not adversely affect the rights, privileges or preferences of any Holder of the Securities.

SECTION 12.2 Meetings of the Holders of Securities; Action by Written Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of the

Holders of such class if directed to do so by the Holders of at least 10% in Liquidation Amount of such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more calls in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Capital Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Security Holders for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing such proxy. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate; and

(iv) unless the Business Trust Act, this Declaration, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Capital Securities are then listed for trading, otherwise provides, the Regular Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

ARTICLE XIII
REPRESENTATIONS OF PROPERTY TRUSTEE
AND DELAWARE TRUSTEE

SECTION 13.1 Representations and Warranties of the Property Trustee.

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(a) the Property Trustee is a corporation or national banking association, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the Property Trustee satisfies the requirements set forth in Section 5.3(a);

(c) the execution, delivery and performance by the Property Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. This Declaration has been duly executed and delivered by the Property Trustee, and it constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);

(d) the execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the articles of association or incorporation, as the case may be, or the by-laws (or other similar organizational documents) of the Property Trustee;

(e) no consent, approval or authorization of, or registration with or notice to, any Federal banking authority is required for the execution, delivery or performance by the Property Trustee of this Declaration; and

(f) the Property Trustee, pursuant to this Declaration, shall hold legal title in the Debentures which are registered in the name of the Property Trustee for the benefit of the Trust.

SECTION 13.2 Representations and Warranties of the Delaware Trustee.

The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) the Delaware Trustee satisfies the requirements set forth in Section 5.2 and has the power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration and, if it is not a natural person, is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization;

(b) the Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and this Declaration. This Declaration under Delaware law constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law); and

(c) no consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Delaware Trustee of this Declaration.

ARTICLE XIV MISCELLANEOUS

SECTION 14.1 Notices.

All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Property Trustee, the Delaware Trustee and the Holders of the Securities):

11825 North Pennsylvania Street Carmel, Indiana 46032 Attention: Lawrence W. Inlow, Esq.

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as Delaware Trustee may give notice of to the Regular Trustees, the Property Trustee and the Holders of the Securities):

First Union Bank of Delaware One Rodney Square 1st Floor 920 King Street Wilmington, Delaware 19801 Attention: Corporate Trust Administration

(c) if given to the Property Trustee, at its Corporate Trust Office (or such other address as the Property Trustee may give notice of to the Regular Trustees, the Delaware Trustee and the Holders of the Securities):

Fleet National Bank Corporate Trust Administration 777 Main Street Hartford, Connecticut 06115 Attention: Michael Hopkins

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice of to the Property Trustee, the Delaware Trustee and the Trust):

Conseco, Inc. 11825 North Pennsylvania Street Carmel, Indiana 46032 Attention: Lawrence W. Inlow, Esq.

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 14.2 Governing Law.

This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

SECTION 14.3 Intention of the Parties.

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 14.4 Headings.

Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 14.5 Successors and Assigns.

Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 14.6 Partial Enforceability.

If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.7 Counterparts.

This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

CONSECO INC, as Sponsor and Debenture Issuer

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick
Title: Executive Vice President and Chief
 Financial Officer

FLEET NATIONAL BANK, as Property Trustee

By: /s/ MICHAEL M. HOPKINS

Name: Michael M. Hopkins
Title: Vice President

**FIRST UNION BANK OF DELAWARE, as
Delaware Trustee**

By: /s/ STEPHEN J. KABA

Name: Stephen J. Kaba
Title: Vice President

/s/ ROLLIN M. DICK

Rollin M. Dick, as Regular Trustee

/s/ STEPHEN C. HILBERT

Stephen C. Hilbert, as Regular Trustee

/s/ LAWRENCE W. INLOW

Lawrence W. Inlow, as Regular Trustee

ANNEX I

TERMS OF 8.70% CAPITAL TRUST PASS-THROUGH SECURITIES 8.70% TRUST COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of November 22, 1996 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration or, if not defined in the Declaration, as defined in the Prospectus referred to below):

1. Designation and Number.

(a) **PREFERRED SECURITIES.** 325,000 Preferred Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of Three Hundred Twenty-Five Million Dollars (\$325,000,000) and a liquidation amount with respect to the assets of the Trust of \$1,000 per Capital Security, are hereby designated for the purposes of identification only as "8.70% Capital Trust Pass-through Securities(sm) (TruPS(sm))" (the "Capital Securities"). The Capital Security Certificates evidencing the Capital Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Capital Securities are listed.

(b) **COMMON SECURITIES.** Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of Ten Million One Hundred Thousand Dollars (\$10,100,000) and a liquidation amount with respect to the assets of the Trust of \$1,000 per Common Security, are hereby designated for the purposes of identification only as "8.70% Trust Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

(a) Distributions payable on each Security will be fixed at a rate per annum of 8.70% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one semiannual period will bear interest thereon from and including the last day of such semiannual period at the Coupon Rate compounded semiannually (to the extent permitted by applicable law). The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property

Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full semiannual Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

(b) Distributions on the Securities will be cumulative, will accrue from November 27, 1996, and will be payable semiannually in arrears, on May 15 and November 15 of each year, commencing on May 15, 1997, except as otherwise described below. The Debenture Issuer has the right under the Indenture to defer payments of interest on the Debentures by extending the interest payment period at any time and from time to time for a period not exceeding 10 consecutive semiannual payments (each an "Extension Period"), during which Extension Period no interest shall be due and payable on the Debentures, provided that no Extension Period shall last beyond the date of maturity of the Debentures. As a consequence of such deferral, Distributions will also be deferred. Despite such deferral, semiannual Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded semiannually during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period, provided that such Extension Period together with all such previous and further extensions thereof may not exceed 10 consecutive semiannual periods and may not extend beyond the date of maturity of the Debentures. Payments of deferred Distributions will be payable to Holders of record of the Securities as they appear on the books and records of the Trust on the record date for Distributions due at the end of such Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Capital Securities remain in global form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates correspond to the interest payment dates on the Debentures. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of the Capital Securities will be made as described under the heading "Description of the Capital Securities -- Book-Entry Issuance -- The Depository Trust Company" in the Prospectus Supplement dated November 22, 1996, to the Prospectus dated November 12, 1996 (together, the "Prospectus") included in the Registration Statement on Form S-3 of the Sponsor and the Trust. The relevant record dates for the Common Securities shall be the same record date as for the Capital Securities. If the Capital Securities shall not continue to remain in global form, the relevant record dates for the Capital Securities shall conform to the rules of any securities exchange on which the Capital Securities are listed and, if none, shall be selected by the Regular Trustees, which dates shall be at least one Business Day but less than 60 Business Days before the relevant payment dates, which payment dates correspond to the interest payment dates on the Debentures. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Debenture Issuer having failed to make a payment under the Debentures, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such

defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) among the Holders of the Securities.

3. Liquidation Distribution Upon Dissolution.

(a) In the event of any voluntary or involuntary liquidation, dissolution, winding-up or termination of the Trust, the Holders of the Securities on the date of the liquidation, dissolution, winding-up or termination, as the case may be, will be entitled to receive solely out of the assets of the Trust available for distribution to Holders of Securities, after satisfaction of liabilities of creditors, an amount equal to the aggregate of the stated liquidation amount of \$1,000 per Security plus any additional amount payable upon redemption of the Debentures as a result of the Make-Whole Premium, as provided for in the Indenture, and in all cases accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such liquidation, dissolution, winding-up or termination, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Securities, with an interest rate equal to the Coupon Rate of, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities, shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities in accordance with Section 4(e) hereof.

(b) If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis.

4. Redemption and Distribution.

(a) Upon the repayment of the Debentures in whole or in part, whether at maturity or upon redemption (such redemption being either at any time and from time to time at the option of the Debenture Issuer or at the option of the Debenture Issuer in connection with the occurrence of a Tax Event as described below), the proceeds from such repayment or redemption shall be simultaneously applied to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed at a redemption price per Security of \$1,000 plus any additional amount payable upon redemption of the Debentures as a result of the Make-Whole Premium as provided for in the Indenture and in all cases an amount equal to accrued and unpaid

Distributions thereon at the date of the redemption, payable in cash (the "Redemption Price"). Holders will be given not less than 30 nor more than 60 days notice of such redemption.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Capital Securities will be redeemed Pro Rata and the Capital Securities to be redeemed will be as described in Section 4(f)(ii) below.

(c) If, at any time, a Tax Event (as defined below) shall occur and be continuing the Regular Trustees shall, except in certain limited circumstances described in this Section 4(c), dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee, having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as the Securities, to be distributed to the Holders of the Securities in liquidation of such Holders' interests in the Trust on a Pro Rata basis, within 90 days following the occurrence of a Tax Event (the "90 Day Period"); provided, however, that, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Securities will not recognize any gain or loss for United States federal income tax purposes as a result of the dissolution of the Trust and the distribution of Debentures, and provided, further, that if at the time there is available to the Trust the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Debenture Issuer, the Sponsor or the Holders of the Securities ("Ministerial Action"), the Trust will pursue such Ministerial Action in lieu of dissolution.

If, however, a Tax Event shall occur and be continuing after receipt of a Dissolution Opinion (as defined herein) by the Regular Trustees and the Debenture Issuer has received an opinion (a "Redemption Tax Opinion") of a nationally recognized independent tax counsel experienced in such matters that, as a result of the Tax Event, there is more than an insubstantial risk that the Debenture Issuer would be precluded from deducting the interest on the Debentures for United States federal income tax purposes even if the Debentures were distributed to the Holders of Securities in liquidation of such Holders' interests in the Trust as described in this Section 4(c), or the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Debenture Issuer shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash within 90 days following the occurrence of such Tax Event, and, following such redemption, Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed shall be redeemed by the Trust at the Redemption Price on a Pro Rata basis; provided, however, that, if at the time there is available to the Trust the opportunity to eliminate, within such 90 day period, the Tax Event by taking some Ministerial Action, the Trust or the Debenture Issuer will pursue such Ministerial Action in lieu of redemption.

"Tax Event" means that the Regular Trustees shall have received an opinion of an independent tax counsel experienced in such matters (a "Dissolution Opinion") to the effect that, as a result of (i) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or (ii) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the date of original issuance of the Capital Securities, there is more than an insubstantial risk that (A) the Trust is, or will be within 90 days after the date thereof, subject to United States federal income tax with respect to interest accrued or received on the Debentures, (B) the Trust is, or will be within 90 days after the date thereof, subject to more than a de minimis amount of taxes, duties or other governmental charges, or (C) interest payable by the Debenture Issuer to the Trust on the Debentures is not, or within 90 days of the date thereof, will not be deductible, in whole or in part, by the Debenture Issuer for United States federal income tax purposes.

(d) The Trust may not redeem fewer than all the outstanding Securities unless all accrued and unpaid Distributions have been paid on all Securities for all semiannual Distribution periods terminating on or before the date of redemption.

(e) In the event that the Sponsor makes the election referred to in Section 8.1(a)(v) of the Declaration, the Regular Trustees shall dissolve the Trust and, after satisfaction of creditors, cause Debentures, held by the Property Trustee, having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on and having the same record date for payment, as the Securities, to be distributed to the Holders of the Securities in liquidation of such Holders' interests in the Trust on a Pro Rata basis in accordance with Section 8 hereof. On and from the date fixed by the Regular Trustees for any distribution of Debentures and dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, and (ii) the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee) will receive one or more global certificate or certificates representing the Debentures to be delivered upon such distribution, and having an aggregate principal amount equal to the aggregated stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities. Any certificates representing Securities, except for certificates representing Capital Securities held by the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the aggregated stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Debenture Issuer or its agent for transfer or reissue.

(f) Redemption or Distribution Procedures.

(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Capital Securities, it being understood that, in respect of Capital Securities registered in the name of and held of record by the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee), the distribution of the proceeds of such redemption will be made to each Clearing Agency Participant (or Person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice (which notice will be irrevocable), then (A) while the Capital Securities are in global form, with respect to the Capital Securities, by 12:00 noon, New York City time, on the redemption date, provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with the Clearing Agency or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Capital Securities and will give the Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities, and (B) with respect to Capital Securities issued in definitive form and Common Securities, provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, then immediately prior to the close of business on the date of such deposit, Distributions will cease to accrue on the Securities so called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Regular Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. If any date fixed for

redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If the Debenture Issuer fails to repay the Debentures on the date of redemption or on maturity or if payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid either by the Property Trustee or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue at the then applicable rate from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to (A) in respect of the Capital Securities, the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Capital Security Certificates have been issued, to the Holder thereof, and (B) in respect of the Common Securities to the Holder thereof.

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Capital Securities by tender, in the open market or by private agreement.

5. Voting Rights - Capital Securities.

(a) Except as provided under Sections 5(b) and 7 and as otherwise required by law and the Declaration, the Holders of the Capital Securities will have no voting rights.

(b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in Liquidation Amount of the Capital Securities, voting separately as a class, may direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or direct the exercise of any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as Holder of the Debentures, to (i) exercise the remedies available under the Indenture with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, or consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent would be required; provided that where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Debentures affected thereby (a "Super Majority"), the Property Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Capital Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. Other than with respect to directing the

time, method and place of conducting a proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Capital Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Property Trustee fails to enforce its rights with respect to the Debentures held by the Trust, any Holder of Capital Securities may, to the extent permitted by applicable law, institute legal proceedings directly against the Debenture Issuer to enforce the Property Trustee's rights under the Debentures without first instituting any legal proceedings against the Property Trustee or any other person or entity. Notwithstanding the foregoing, if an Event of Default under the Declaration has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures issued to the Trust on the date such interest or principal is otherwise payable, then a Holder of Capital Securities may institute a proceeding directly against the Debenture Issuer for enforcement of payment to the Holder of the Capital Securities of the principal of or interest on the Debentures on or after the respective due dates specified in the Debentures, and the amount of the payment will be based on the Holder's pro rata share of the amount due and owing on all of the Capital Securities.

Any approval or direction of Holders of Capital Securities may be given at a separate meeting of Holders of Capital Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Capital Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of Capital Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Capital Securities will be required for the Trust to redeem and cancel Capital Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

Notwithstanding that Holders of Capital Securities are entitled to vote or consent under any of the circumstances described above, any of the Capital Securities that are owned by the Sponsor or any Affiliate of the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

6. Voting Rights - Common Securities.

(a) Except as provided under Sections 6(b) and (c) and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with Article V of the Declaration, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 of the Declaration and only after the Event of Default with respect to the Capital Securities has been cured, waived or otherwise eliminated and subject to the requirements set forth in this paragraph, the Holders of a Majority in Liquidation Amount of the Common Securities, voting separately as a class, may direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or direct the exercise of any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as Holder of the Debentures, to (i) exercise the remedies available under the Indenture with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, or consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent would be required; provided that, where a consent or action under the Indenture would require the consent or act of a Super Majority of the Holders of the Debentures affected thereby, the Property Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Common Securities. Other than with respect to directing the time, method and place of conducting a proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Property Trustee fails to enforce its rights with respect to the Debentures held by the Trust, any Holder of Common Securities may, to the extent permitted by applicable law, institute legal proceedings directly against the Debenture Issuer to enforce the Property Trustee's rights under the Debentures without first instituting any legal proceedings against the Property Trustee or any other person or entity. Notwithstanding the foregoing, if an Event of Default under the Declaration has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures issued to the Trust on the date such interest or principal is otherwise payable, then a Holder of Common Securities may institute a proceeding directly against the Debenture Issuer for enforcement of payment to the Holder of the Common Securities of the principal of or interest on the Debentures on or after the respective due dates specified in the Debentures, and the amount of the payment will be based on the Holder's pro rata share of the amount due and owing on all of the Common Securities.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Regular Trustees will cause

a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

7. Amendments to Declaration and Indenture.

(a) In addition to any requirements under Section 12.1 of the Declaration, if any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in

Section 8.1 of the Declaration, then the Holders of outstanding Securities voting together as a single class, will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in Liquidation Amount of the Securities affected thereby, voting together as a single class; provided, however, if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of a Majority in Liquidation Amount of such class of Securities.

(b) In the event the consent of the Property Trustee as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by a Majority in Liquidation Amount of the Securities voting together as a single class; provided, however, that where a consent under the Indenture would require the consent of a Super Majority of the Holders of the Debentures, the Property Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding; provided, further, that the Property Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this Section 7(b) unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

8. Pro Rata.

A reference in these terms of the Securities to any payment, distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default under the Declaration has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Capital Securities pro rata according to the aggregate liquidation amount of Capital Securities held by the relevant Holder relative to the aggregate liquidation amount of all Capital Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Capital Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding. When the Property Trustee is making payments on the Securities, it is entitled to assume that no Event of Default has occurred and is continuing unless the Event of Default is actually known to a Responsible Officer of the Property Trustee.

9. Ranking.

The Capital Securities rank pari passu and payment thereon shall be made Pro Rata with the Common Securities except that, where an Event of Default occurs and is continuing under the Indenture in respect of the Debentures held by the Property Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Capital Securities.

10. Acceptance of Securities Guarantee and Indenture.

Each Holder of Capital Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Capital Securities Guarantee and the Common Securities Guarantee, respectively, including the subordination provisions therein and to the provisions of the Indenture and the Debentures.

11. No Preemptive Rights.

The Holders of the Securities shall have no preemptive rights to subscribe for any additional securities.

12. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee or the Common Securities Guarantee (as may be appropriate) and the Indenture to a Holder without charge on written request to the Sponsor at its principal place of business.

EXHIBIT A-1

FORM OF PREFERRED SECURITY CERTIFICATE

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL CERTIFICATE]

INSERT - This Preferred Security is a Global Certificate within the meaning of the Declaration hereinafter referred to and is registered in the name of The Depository Trust Company (the "Depository") or a nominee of the Depository. This Preferred Security is exchangeable for Preferred Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Declaration and no transfer of this Preferred Security (other than a transfer of this Preferred Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Preferred Security Certificate is presented by an authorized representative of the Depository to the Trust or its agent for registration of transfer, exchange or payment, and any Preferred Security Certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of the Depository (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

Certificate Number

Number of Preferred Securities

CUSIP NO.

Certificate Evidencing Preferred Securities
of

CONSECO FINANCING TRUST II

8.70% Capital Trust Pass-through Securities (TruPSSM) (liquidation amount \$1,000 per Security)

CONSECO FINANCING TRUST II, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that _____ (the "Holder") is the registered owner of preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 8.70% Capital Trust Pass-through Securities (liquidation amount \$1,000 per Security) (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities

represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of November 22, 1996, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Capital Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Capital Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Capital Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this ____ day of _____, 199__.

CONSECO FINANCING TRUST II

By: _____ Name: _____ Title: Regular Trustee

[FORM OF REVERSE OF SECURITY]

Distributions payable on each Capital Security will be fixed at a rate per annum of 8.70% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one semiannual period will bear interest thereon compounded semiannually at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full semiannual Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, distributions on the Capital Securities will be cumulative, will accrue from the date of original issuance and will be payable semiannually in arrears, on May 15 and November 15 of each year, commencing on May 15, 1997, which payment dates shall correspond to the interest payment dates on the Debentures. The Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 10 consecutive semiannual periods (each an "Extension Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, semiannual Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded semiannually during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period; provided that such Extension Period together with all such previous and further extensions thereof may not exceed 10 consecutive semiannual periods. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

The Capital Securities shall be redeemable as provided in the Declaration.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

_____ agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____ (Sign exactly as your name appears on the other side of this Preferred Security Certificate)

EXHIBIT A-2

FORM OF COMMON SECURITY CERTIFICATE

Certificate Number

Number of Common Securities

Certificate Evidencing Common Securities
of
CONSECO FINANCING TRUST II

8.70% Trust Common Securities

(liquidation amount \$1,000 per Common Security)

CONSECO FINANCING TRUST II, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that _____ (the "Holder") is the registered owner of common securities of the Trust representing common undivided beneficial interests in the assets of the Trust designated the 8.70% Trust Common Securities (liquidation amount \$1,000 per Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of November 22, 1996, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Common Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Common Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Debentures.

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IN WITNESS WHEREOF, the Trust has executed this certificate this ____ day of _____, 199__.

CONSECO FINANCING TRUST II

By: _____
Name: _____
Title: Regular Trustee

A2-2

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[FORM OF REVERSE OF SECURITY]

Distributions payable on each Common Security will be fixed at a rate per annum of 8.70% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Common Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one semiannual period will bear interest thereon compounded semiannually at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, distributions on the Common Securities will be cumulative, will accrue from the date of original issuance and will be payable semiannually in arrears, on May 15 and November 15 of each year, commencing on May 15, 1997, to Holders of record on a date to be selected by the Regular Trustees, which dates shall be at least one Business Day but less than 60 Business Days before the relevant payment dates, which payment dates shall correspond to the interest payment dates on the Debentures. The Debentures Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 10 consecutive semiannual periods (each an "Extension Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, semiannual Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded semiannually during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period; provided that such Extension Period together with all such previous and further extensions thereof may not exceed 10 consecutive semiannual periods. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the Payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

The Common Securities shall be redeemable as provided in the Declaration.

A2-3

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

_____ agent to transfer this Common Security Certificate on the books
of the Trust. The agent may substitute another to act for
him or her.

Date: _____

Signature: _____

(Sign exactly as your name appears on the other side of this Common Security Certificate)

A2-4

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This Preferred Security is a Global Certificate within the meaning of the Declaration hereinafter referred to and is registered in the name of The Depository Trust Company (the "Depository") or a nominee of the Depository. This Preferred Security is exchangeable for Preferred Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Declaration and no transfer of this Preferred Security (other than a transfer of this Preferred Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Preferred Security Certificate is presented by an authorized representative of the Depository to the Trust or its agent for registration of transfer, exchange or payment, and any Preferred Security Certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of the Depository (and any payment hereon is made to Cede & Co. or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

Certificate Number Number of Preferred Securities
1 325,000

CUSIP NO. 20846G AA 8

Certificate Evidencing Preferred Securities of
CONSECO FINANCING TRUST II

8.70% Capital Trust Pass-through Securities (TruPSSM)
(liquidation amount \$1,000 per Security)

CONSECO FINANCING TRUST II, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Cede & Co. (the "Holder") is the registered owner of preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 8.70% Capital Trust Pass-through Securities (liquidation amount \$1,000 per Security) (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of November 22, 1996, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Capital Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The

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Holder is entitled to the benefits of the Capital Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Capital Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this 27th day of November, 1996.

CONSECO FINANCING TRUST II

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick

Title: Regular Trustee

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Distributions payable on each Capital Security will be fixed at a rate per annum of 8.70% (the "Coupon Rate") of the stated liquidation amount of \$1,000 per Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one semiannual period will bear interest thereon compounded semiannually at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full semiannual Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, distributions on the Capital Securities will be cumulative, will accrue from the date of original issuance and will be payable semiannually in arrears, on May 15 and November 15 of each year, commencing on May 15, 1997, which payment dates shall correspond to the interest payment dates on the Debentures. The Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 10 consecutive semiannual periods (each an "Extension Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, semiannual Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded semiannually during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period; provided that such Extension Period together with all such previous and further extensions thereof may not exceed 10 consecutive semiannual periods. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

The Capital Securities shall be redeemable as provided in the Declaration.

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

_____ agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____ (Sign exactly as your name appears on the other side of this Preferred Security Certificate)

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11/27/96 9:04 am

CAPITAL SECURITIES GUARANTEE AGREEMENT

CONSECO FINANCING TRUST II

Dated as of November 27, 1996

CROSS REFERENCE TABLE*

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
-----	-----
310(a)	4.1(a)
310(b)	4.1(c)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
312(c)	2.9
313(a)	2.3
313(b)	2.3
313(c)	2.3
313(d)	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	2.5
314(f)	Inapplicable
315(a)	3.1(d); 3.2(a)
315(b)	2.7(a)
315(c)	3.1(c)
315(d)	3.1(d)
316(a)	2.6; 5.4(a)
317(a)	2.10; 5.4
318(a)	2.1(b)

* This Cross-Reference Table does not constitute part of the Guarantee Agreement and shall not have any bearing upon the interpretation of any of its terms or provisions.

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CAPITAL SECURITIES GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the "Capital Securities Guarantee"), dated as of November 27, 1996, is executed and delivered by Conseco, Inc., an Indiana corporation (the "Guarantor"), and Fleet National Bank, as trustee (the "Capital Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Capital Securities (as defined herein) of Conseco Financing Trust II, a Delaware statutory business trust (the "Issuer").

WHEREAS, pursuant to the Declaration (as defined herein), the Issuer is issuing on the date hereof 325,000 preferred securities, having an aggregate liquidation amount of \$325,000,000, designated the 8.70% Capital Trust Pass-through Securities (the "Capital Securities");

WHEREAS, as incentive for the Holders to purchase the Capital Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Capital Securities Guarantee, to pay to the Holders of the Capital Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

WHEREAS, the Guarantor is also executing and delivering a guarantee agreement (as amended, modified or supplemented from time to time, the "Common Securities Guarantee") in substantially identical terms to this Capital Securities Guarantee for the benefit of the holders of the Common Securities (as defined herein), except that if an Event of Default (as defined in the Declaration), has occurred and is continuing, the rights of holders of the Common Securities to receive payments under the Common Securities Guarantee are subordinated to the rights of Holders of Capital Securities to receive Guarantee Payments under this Capital Securities Guarantee.

NOW, THEREFORE, in consideration of the purchase by each Holder of Capital Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Capital Securities Guarantee for the benefit of the Holders.

ARTICLE I INTERPRETATION AND DEFINITIONS

SECTION 1.1 Interpretation and Definitions.

In this Capital Securities Guarantee, unless the context otherwise requires:

- (a) capitalized terms used in this Capital Securities Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Capital Securities Guarantee has the same meaning throughout;
- (c) all references to "the Capital Securities Guarantee" or "this Capital Securities Guarantee" are to this Capital Securities Guarantee as modified, supplemented or amended from time to time;
- (d) all references in this Capital Securities Guarantee to Articles and Sections are to Articles and Sections of this Capital Securities Guarantee, unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Capital Securities Guarantee, unless otherwise defined in this Capital Securities Guarantee or unless the context otherwise requires; and
- (f) a reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule 405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

"Base Indenture" means the Indenture dated November 14, 1996 among the Guarantor (the "Debenture Issuer") and Fleet National Bank, as trustee, as supplemented by the First Supplemental Indenture dated as of November 14, 1996.

"Business Day" means any day other than a day on which banking institutions in New York, New York or in the city of the Corporate Trust Office are authorized or required by law to close.

"Common Securities" means the securities representing common undivided beneficial interests in the assets of the Issuer.

"Corporate Trust Office" means the office of the Capital Guarantee Trustee at which the corporate trust business of the Capital Guarantee Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Capital Securities Guarantee is located at 777 Main Street, Hartford, Connecticut 06115, Attention: Corporate Trust Administration.

"Covered Person" means any Holder or beneficial owner of Capital Securities.

"Debentures" means the series of subordinated deferrable interest debentures to be issued by the Guarantor designated the 8.70% Subordinated Deferrable Interest Debentures due 2026 held by the Property Trustee (as defined in the Declaration) of the Issuer.

"Declaration" means the Amended and Restated Declaration of Trust, dated as of November 22, 1996, as amended, modified or supplemented from time to time, among the trustees of the Issuer named therein, the Guarantor, as sponsor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer.

"Guarantee Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Capital Securities Guarantee.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Capital Securities, to the extent not paid or made by the Issuer: (i) any accrued and unpaid Distributions (as defined in the Declaration) that are required to be paid on such Capital Securities to the extent the Issuer shall have funds available therefor, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption and the Make-Whole Premium (as defined in the Declaration) (the "Redemption Price") to the extent the Issuer has funds available therefor, with respect to any Capital Securities called for redemption by the Issuer, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to the Holders in exchange for Capital Securities as provided in the Declaration or the redemption of all the Capital Securities upon maturity or redemption of the Debentures as provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount plus any amount payable as a result of the Make-Whole Premium and all accrued and unpaid Distributions on the Capital Securities to the date of payment, to the extent the Issuer shall have funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer (in either case, the "Liquidation Distribution"). If an Event of Default (as defined in the Declaration) has occurred and is continuing, the rights of holders of the Common Securities to receive payments under the Common Securities Guarantee are subordinated to the rights of Holders of Capital Securities to receive Guarantee Payments under this Capital Securities Guarantee.

"Holder" shall mean any holder, as registered on the books and records of the Issuer of any Capital Securities; provided, however, that, in determining whether the holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor; and provided further, that in determining whether the Holders of the requisite liquidation amount of Capital Securities have voted on any matter provided for in this Capital Securities Guarantee, then for the purpose of such determination only (and not for any other purpose hereunder), if the Capital Securities remain in the form of one or more Global Certificates (as defined in the Declaration), the term "Holders" shall mean the holder of the Global Certificate acting at the direction of the Capital Security Beneficial Owners (as defined in the Declaration).

"Indemnified Person" means the Capital Guarantee Trustee, any Affiliate of the Capital Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Capital Guarantee Trustee.

"Indenture" means the Base Indenture and any indenture supplemental thereto pursuant to which the Debentures are to be issued to the Property Trustee (as defined in the Declaration) of the Issuer.

"Majority in Liquidation Amount of the Capital Securities" means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Capital Securities, voting separately as a class, who are the record holders of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Capital Securities. In determining whether the Holders of the requisite amount of Capital Securities have voted, Capital Securities which are owned by the Guarantor or any Affiliate of the Guarantor or any other obligor on the Capital Securities shall be disregarded (to the extent known to be so owned by the Capital Guarantee Trustee) for the purpose of any such determination.

"Officers' Certificate" means, with respect to any Person, a certificate signed by two Authorized Officers (as defined in the Declaration) of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Capital Securities Guarantee shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Capital Guarantee Trustee" means Fleet National Bank, until a Successor Capital Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Capital Securities Guarantee and thereafter means each such Successor Capital Guarantee Trustee.

"Responsible Officer" means, with respect to the Capital Guarantee Trustee, any officer within the Corporate Trust Office of the Capital Guarantee Trustee, including any vice-president, any assistant vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the Corporate Trust Office of the Capital Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Successor Capital Guarantee Trustee" means a successor Capital Guarantee Trustee possessing the qualifications to act as Capital Guarantee Trustee under Section 4.1.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

ARTICLE II TRUST INDENTURE ACT

SECTION 2.1 Trust Indenture Act; Application.

(a) This Capital Securities Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Capital Securities Guarantee and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Capital Securities Guarantee limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

SECTION 2.2 Lists of Holders of Securities.

(a) The Guarantor shall provide the Capital Guarantee Trustee with a list, in such form as the Capital Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Capital Securities ("List of Holders"), (i) within one Business Day after January 1 and June 30 of each year and current as of such date, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request from the Capital Guarantee Trustee for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Capital Guarantee Trustee; provided, that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Capital Guarantee Trustee by the Guarantor. The Capital Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided that it may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Capital Guarantee Trustee shall comply with its obligations under Section 311(a), 311(b) and Section 312(b) of the Trust Indenture Act.

SECTION 2.3 Reports by Capital Guarantee Trustee.

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the issuance of the Capital Securities), the Capital Guarantee Trustee shall provide to the Holders of the Capital Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Capital Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 Periodic Reports to Capital Guarantee Trustee.

The Guarantor shall provide to the Capital Guarantee Trustee such documents, reports and information as required by Section 314 (if any) of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

SECTION 2.5 Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Capital Guarantee Trustee such evidence of compliance with any conditions precedent provided for in this Capital Securities Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.6 Guarantee Event of Default; Waiver.

The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote, on behalf of the Holders of all of the Capital Securities, waive any past Guarantee Event of Default and its consequences. Upon such waiver, any such Guarantee Event of Default shall cease to exist, and any Guarantee Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Capital Securities Guarantee, but no such waiver shall extend to any subsequent or other default or Guarantee Event of Default or impair any right consequent thereon.

SECTION 2.7 Guarantee Event of Default; Notice.

(a) The Capital Guarantee Trustee shall, within 90 days after the occurrence of a Guarantee Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Capital Securities, notices of all Guarantee Events of Default actually known to a Responsible Officer of the Capital Guarantee Trustee, unless such defaults have been cured before the giving of such notice; provided, that the Capital Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Capital Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Capital Securities.

(b) The Capital Guarantee Trustee shall not be deemed to have knowledge of any Guarantee Event of Default unless the Capital Guarantee Trustee shall have received written notice thereof, or a Responsible Officer of the Capital Guarantee Trustee charged with the administration of the Declaration shall have obtained actual knowledge thereof.

SECTION 2.8 Conflicting Interests

The Declaration shall be deemed to be specifically described in this Capital Securities Guarantee for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

ARTICLE III
POWERS, DUTIES AND RIGHTS OF
CAPITAL GUARANTEE TRUSTEE

SECTION 3.1 Powers and Duties of Capital Guarantee Trustee.

(a) This Capital Securities Guarantee shall be held by the Capital Guarantee Trustee on behalf of the Issuer for the benefit of the Holders of the Capital Securities, and the Capital Guarantee Trustee shall not transfer this Capital Securities Guarantee to any Person except a Holder of Capital Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Capital Guarantee Trustee on acceptance by such Successor Capital Guarantee Trustee of its appointment to act as Successor Capital Guarantee Trustee. The right, title and interest of the Capital Guarantee Trustee in and to this Capital Securities Guarantee shall automatically vest in any Successor Capital Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Capital Guarantee Trustee.

(b) If a Guarantee Event of Default actually known to a Responsible Officer of the Capital Guarantee Trustee has occurred and is continuing, the Capital Guarantee Trustee shall enforce this Capital Securities Guarantee for the benefit of the Holders of the Capital Securities.

(c) The Capital Guarantee Trustee, before the occurrence of any Guarantee Event of Default and after the curing of all Guarantee Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Capital Securities Guarantee, and no implied covenants shall be read into this Capital Securities Guarantee against the Capital Guarantee Trustee. In case a Guarantee Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Capital Guarantee Trustee, the Capital Guarantee Trustee shall exercise such of the rights and powers vested in it by this Capital Securities Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(d) No provision of this Capital Securities Guarantee shall be construed to relieve the Capital Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of any Guarantee Event of Default and after the curing or waiving of all such Guarantee Events of Default that may have occurred:

(A) the duties and obligations of the Capital Guarantee Trustee shall be determined solely by the express provisions of this Capital Securities Guarantee, and the Capital Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Capital Securities Guarantee, and no implied covenants or obligations shall be read into this Capital Securities Guarantee against the Capital Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Capital Guarantee Trustee, the Capital Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Capital Guarantee Trustee and conforming to the requirements of this Capital Securities Guarantee; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Capital Guarantee Trustee, the Capital Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Capital Securities Guarantee;

(ii) the Capital Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Capital Guarantee Trustee, unless it shall be proved

that the Capital Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(iii) the Capital Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Capital Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Capital Guarantee Trustee, or exercising any trust or power conferred upon the Capital Guarantee Trustee under this Capital Securities Guarantee; and

(iv) no provision of this Capital Securities Guarantee shall require the Capital Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Capital Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Capital Securities Guarantee or indemnity, reasonably satisfactory to the Capital Guarantee Trustee, against such risk or liability is not reasonably assured to it.

SECTION 3.2 Certain Rights of Capital Guarantee Trustee.

(a) Subject to the provisions of Section 3.1:

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

(ii) Any direction or act of the Guarantor contemplated by this Capital Securities Guarantee shall be sufficiently evidenced by an Officers' Certificate.

(iii) Whenever, in the administration of this Capital Securities Guarantee, the Capital Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Capital Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor.

(iv) The Capital Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or registration thereof).

(v) The Capital Guarantee Trustee may consult with counsel, and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Capital Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Capital Securities Guarantee from any court of competent jurisdiction.

(vi) The Capital Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Capital Securities Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Capital Guarantee Trustee such security and indemnity, reasonably satisfactory to the Capital Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Capital Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Capital Guarantee Trustee; provided, that nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Capital Guarantee Trustee, upon the occurrence of a Guarantee Event of Default, of its obligation to exercise the rights and powers vested in it by this Capital Securities Guarantee.

(vii) The Capital Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Capital Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(viii) The Capital Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Capital Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(ix) Any action taken by the Capital Guarantee Trustee or its agents hereunder shall bind the Holders of the Capital Securities, and the signature of the Capital Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Capital Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Capital Securities Guarantee, both of which shall be conclusively evidenced by the Capital Guarantee Trustee's or its agent's taking such action.

(x) Whenever in the administration of this Capital Securities Guarantee the Capital Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Capital Guarantee Trustee (i) may request instructions from the Holders of a Majority in Liquidation Amount of the Capital Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in accordance with such instructions.

(b) No provision of this Capital Securities Guarantee shall be deemed to impose any duty or obligation on the Capital Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Capital Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Capital Guarantee Trustee shall be construed to be a duty.

SECTION 3.3 Not Responsible for Recitals or Issuance of Guarantee.

The recitals contained in this Capital Securities Guarantee shall be taken as the statements of the Guarantor, and the Capital Guarantee Trustee does not assume any responsibility for their correctness. The Capital Guarantee Trustee makes no representation as to the validity or sufficiency of this Capital Securities Guarantee.

ARTICLE IV
CAPITAL GUARANTEE TRUSTEE

SECTION 4.1 Capital Guarantee Trustee; Eligibility.

(a) There shall at all times be a Capital Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Capital Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Capital Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Capital Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Capital Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

(d) Any corporation into which the Capital Guarantee Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Capital Guarantee Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Capital Guarantee Trustee, shall be the successor of the Capital Guarantee Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 4.2 Appointment, Removal and Resignation of Capital Guarantee Trustee.

(a) Subject to Section 4.2(b), the Capital Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Capital Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Capital Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Capital Guarantee Trustee and delivered to the Guarantor.

(c) The Capital Guarantee Trustee appointed to office shall hold office until a Successor Capital Guarantee Trustee shall have been appointed or until its removal or resignation. The Capital Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Capital Guarantee Trustee and delivered to the Guarantor,

which resignation shall not take effect until a Successor Capital Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Capital Guarantee Trustee and delivered to the Guarantor and the resigning Capital Guarantee Trustee.

(d) If no Successor Capital Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Capital Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Capital Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Capital Guarantee Trustee.

(e) No Capital Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Capital Guarantee Trustee.

(f) Upon termination of this Capital Securities Guarantee or removal or resignation of the Capital Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Capital Guarantee Trustee all amounts owing for fees and reimbursement of expenses which have accrued to the date of such termination, removal or resignation.

ARTICLE V GUARANTEE

SECTION 5.1 Guarantee.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.2 Waiver of Notice and Demand.

The Guarantor hereby waives notice of acceptance of this Capital Securities Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands. Notwithstanding anything to the contrary herein, the Guarantor retains all of its rights under the Indenture to extend the interest payment period on the Debentures and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Extended Interest Payment Period (as defined in the Indenture) with respect to the Distributions (as defined in the Declaration) on the Capital Securities.

SECTION 5.3 Obligations Not Affected.

The obligations, covenants, agreements and duties of the Guarantor under this Capital Securities Guarantee shall be absolute and unconditional and shall remain in full force and effect until the entire liquidation amount of all outstanding Capital Securities shall have been paid and such obligation shall in no way be affected or impaired by reason of the happening from time to time of any event, including without limitation, the following, whether or not with notice to, or the consent of, the Guarantor:

- (a) The release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Capital Securities to be performed or observed by the Issuer;
- (b) The extension of time for the payment by the Issuer of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Capital Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Capital Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Debentures permitted by the Indenture);
- (c) Any failure, omission, delay or lack of diligence on the part of the Property Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Property Trustee or the Holders pursuant to the terms of the Capital Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;
- (d) The voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;
- (e) Any invalidity of, or defect or deficiency in, the Capital Securities;
- (f) The settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- (g) Any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances. There shall be no obligation of the Capital Guarantee Trustee or the Holders to give notice to, or obtain consent of, the Guarantor or any other Person with respect to the happening of any of the foregoing. No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature that the Guarantor has or may have against any Holder shall be available hereunder to the Guarantor against such Holder to reduce the payments to it under this Capital Securities Guarantee.

SECTION 5.4 Rights of Holders.

- (a) The Holders of a Majority in Liquidation Amount of the Capital Securities have the right to direct the time, method and place of conducting of any proceeding for any remedy available to the Capital Guarantee Trustee in respect of this Capital Securities Guarantee or exercising any trust or power conferred upon the Capital Guarantee Trustee under this Capital Securities Guarantee.
- (b) If the Capital Guarantee Trustee fails to enforce this Capital Securities Guarantee, then any Holder of Capital Securities may institute a legal proceeding directly against the Guarantor to enforce the Capital Guarantee Trustee's rights under this Capital Securities Guarantee without first instituting a legal proceeding against the Issuer, the Capital Guarantee Trustee or any other person or entity. Notwithstanding the foregoing, if the Guarantor has failed to make a Guarantee Payment, a Holder of Capital Securities may directly institute a proceeding against the Guarantor for enforcement of the Capital Securities Guarantee for such payment to the Holder of the Capital Securities of the principal of or interest on the Debentures on or after the respective due dates

specified in the Debentures, and the amount of the payment will be based on the Holder's pro rata share of the amount due and owing on all of the Capital Securities. The Guarantor hereby waives any right or remedy to require that any action on this Capital Securities Guarantee be brought first against the Issuer or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.5 Guarantee of Payment.

This Capital Securities Guarantee creates a guarantee of payment and not of collection.

SECTION 5.6 Subrogation.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Capital Securities against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Capital Securities Guarantee; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Capital Securities Guarantee, if, at the time of any such payment, any amounts are due and unpaid under this Capital Securities Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Capital Guarantee Trustee for the benefit of the Holders.

SECTION 5.7 Independent Obligations.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Capital Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Capital Securities Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

ARTICLE VI LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.1 Limitation of Transactions.

So long as any Capital Securities remain outstanding, if there shall have occurred a Guarantee Event of Default or an event of default under the Declaration, then (a) the Guarantor shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock, (b) the Guarantor shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees) issued by the Guarantor which rank pari passu with or junior to the Debentures and (c) the Guarantor shall not make any guarantee payments with respect to the foregoing (other than pursuant to this Capital Securities Guarantee); provided, however, the Guarantor may (i) declare and pay a stock dividend where the dividend stock is the same stock as that on which the dividend is being paid or (ii) purchase or acquire shares of its common stock in connection with the satisfaction by the Guarantor of its obligations under any employee benefit plans.

SECTION 6.2 Ranking.

This Capital Securities Guarantee will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other liabilities of the Guarantor, except those liabilities of the Guarantor made pari passu or subordinate by their terms, (ii) pari passu with the most senior preferred or preference stock now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any preferred or preference stock of any Affiliate of the Guarantor, and (iii) senior to the Guarantor's common stock.

If an Event of Default has occurred and is continuing under the Declaration, the rights of the holders of the Common Securities to receive any payments under the Common Securities Guarantee Agreement shall be subordinated to the rights of the Holders of Capital Securities to receive Guarantee Payments hereunder.

ARTICLE VII TERMINATION

SECTION 7.1 Termination.

This Capital Securities Guarantee shall terminate upon (i) full payment of the Redemption Price of all Capital Securities, (ii) upon the distribution of the Debentures to the Holders of all of the Capital Securities or (iii) upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Capital Securities Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Capital Securities must restore payment of any sums paid under the Capital Securities or under this Capital Securities Guarantee.

ARTICLE VIII INDEMNIFICATION

SECTION 8.1 Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Capital Securities Guarantee and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Capital Securities Guarantee or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Capital Securities might properly be paid.

SECTION 8.2 Indemnification.

The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.2 shall survive the termination of this Capital Securities Guarantee.

ARTICLE IX MISCELLANEOUS

SECTION 9.1 Successors and Assigns.

All guarantees and agreements contained in this Capital Securities Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Capital Securities then outstanding.

SECTION 9.2 Amendments.

Except with respect to any changes that do not adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Capital Securities Guarantee may only be amended with the prior approval of the Holders of at least a Majority in Liquidation Amount of the Capital Securities. The provisions of Section 12.2 of the Declaration with respect to meetings of, and action by written consent of, the Holders of the Securities apply to the giving of such approval.

SECTION 9.3 Notices.

All notices provided for in this Capital Securities Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) If given to the Capital Guarantee Trustee, at the Capital Guarantee Trustee's mailing address set forth below (or such other address as the Capital Guarantee Trustee may give notice of to the Guarantor and the Holders of the Capital Securities):

Fleet National Bank 777 Main Street Hartford, Connecticut 06115 Attention: Corporate Trust Administration

(b) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Capital Guarantee Trustee and the Holders of the Capital Securities):

Conseco, Inc. 11825 North Pennsylvania Street Carmel, Indiana 46032 Attention: Lawrence W. Inlow, Esq.

(c) If given to any Holder of Capital Securities, at the address set forth on the books and records of the Issuer.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.4 Benefit.

This Capital Securities Guarantee is solely for the benefit of the Holders of the Capital Securities and, subject to Section 3.1(a), is not separately transferable from the Capital Securities.

SECTION 9.5 Governing Law.

THIS CAPITAL SECURITIES GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED

AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, this Capital Securities Guarantee is executed as of the day and year first above written.

CONSECO, INC., as Guarantor

By: /s/ ROLLIN M. DICK

Name: Rollin M. Dick
Title: Executive Vice President and Chief
Financial Officer

**FLEET NATIONAL BANK,
as Capital Guarantee Trustee**

By: /s/ MICHAEL M. HOPKINS

Name: Michael M. Hopkins
Title: Vice President

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EXHIBIT 5.3

RICHARDS, LAYTON & FINGER

One Rodney Square
P.O. Box 551
Wilmington, DE 19899

November 27, 1996

Conseco Financing Trust II
c/o Conseco, Inc.
11825 N. Pennsylvania Street
Carmel, IN 46032

Re: Conseco Financing Trust II

Ladies and Gentlemen:

We have acted as special Delaware counsel for Conseco, Inc., an Indiana corporation (the "Company"), and Conseco Financing Trust II, a Delaware business trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

- (a) The Certificate of Trust of the Trust, dated October 28, 1996, as filed with the office of the Secretary of State of the State of Delaware (the "Secretary of State") on October 28, 1996;
- (b) The Declaration of Trust of the Trust, dated as of October 28, 1996 between the Company and the trustees of the Trust named therein;
- (c) The Registration Statement (the "Registration Statement") on Form S-3, including a preliminary prospectus with respect to the Trust and certain other subsidiary trusts of the Company filed by the Company and the Trust with the Securities and Exchange Commission on October 29, 1996, and the Prospectus Supplement, dated November 22, 1996, with respect to the Trust (together with the Prospectus included in the Registration Statement, the "Prospectus"),

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relating to the Capital Trust Pass-through Securities of the Trust representing preferred undivided beneficial interests in the assets of such Trust (each, a "Capital Security" and collectively, the "Capital Securities");

(d) A form of Amended and Restated Declaration of Trust for the Trust, to be entered into between the Company, the trustees of the Trust named therein, and the holders, from time to time, of the undivided beneficial interests in the assets of such Trust (including the exhibits and Annex I thereto) (the "Declaration"), attached as an exhibit to the Registration Statement; and

(e) A Certificate of Good Standing for the Trust, dated November 27, 1996, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Declaration.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (e) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (e) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Declaration constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of the Trust, and that the Declaration and the Certificate of Trust are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, the due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its organizations or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Capital Security is to be issued by the Trust (collectively, the "Capital Security Holders") of a Capital Security Certificate for such Capital Security and the payment for such Capital Security, in accordance with the Declaration and the Registration Statement, and (vii) that the Capital

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Securities are issued and sold to the Capital Security Holders in accordance with the Declaration and the Registration Statement. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder which are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a business trust under the Business Trust Act.
2. The Capital Securities of the Trust will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.
3. The Capital Security Holders, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Capital Security Holders may be obligated to make payments as set forth in the Declaration.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. We hereby consent to the use of our name under the heading "Legal Matters" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other person for any purpose.

Very truly yours,

/s/ Richards, Layton & Finger

RICHARDS, LAYTON & FINGER

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November 22, 1996

Conseco, Inc.
Conseco Financing Trust II
11825 North Pennsylvania Street
Carmel, Indiana 46032

Ladies and Gentlemen:

We have acted as special tax counsel for Conseco, Inc. ("Conseco"), an Indiana corporation, and Conseco Financing Trust II (the "Trust"), a Delaware business trust, in connection with a Registration Statement on Form S-3 filed with the Securities and Exchange Commission on or about October 29, 1996 (as amended through the date hereof, the "Registration Statement") which registered, among other things, Capital Trust Pass-through Securities (the "Capital Securities") of the Trust (liquidation amount of \$1,000 per Security). In connection therewith, we have participated in the preparation of, and have reviewed, the Registration Statement, including the prospectus (the "Prospectus") and the form of prospectus supplement (the "Prospectus Supplement") included therewith with respect to the Trust.

We have examined and relied upon the Registration Statement and, in each case as filed with the Registration Statement, (i) the form of indenture (the "Indenture") between Conseco and Fleet National Bank, as trustee; (ii) the form of Second Supplemental Indenture to be used in connection with the issuance of the Subordinated Deferrable Interest Debentures of Conseco due 2026 (the "Subordinated Debentures") (the "Supplemental Indenture"), which Supplemental Indenture includes the form of the Subordinated Debentures; (iii) the form of declaration of trust for the Trust (the "Declaration"), which Declaration includes the form of the Capital Securities; (iv) the form of guarantee by Conseco with respect to the Capital Securities (the "Guarantee"); and (v) certain other relevant documents used in connection with the issuance of the Subordinated Debentures, the Capital Securities and the Guarantee (collectively the "Operative Documents"). As to certain questions

of fact material or relevant to the opinion expressed herein, we have relied upon a certificate obtained from an officer of Conseco and have assumed the accuracy of the facts certified or stated to us and have made no independent investigation of such facts.

Based on the foregoing and assuming that the Operative Documents are executed and delivered in substantially the form filed as exhibits to the Registration Statement and that the transactions contemplated to occur under the Operative Documents in fact occur in accordance with the terms thereof, we hereby confirm, in all material respects, that the discussion set forth in the Prospectus Supplement with respect to the Trust under the heading "United States Federal Income Taxation" is a fair and accurate summary of the matters addressed therein, based upon current law and the assumptions stated or referred to therein. There can be no assurance that contrary positions may not be taken by the Internal Revenue Service.

We hereby consent to the use of our name in the above-captioned Registration Statement and to the filing of this opinion as Exhibit 8 to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933. This opinion is expressed as of the date hereof, unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

/s/ LOCKE REYNOLDS BOYD & WEISELL

LOCKE REYNOLDS BOYD & WEISELL

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Pro Forma Computation of Ratio of Earnings to Fixed Charges
and Preferred Dividends
(Dollars in millions)

	Year Ended December 31, 1995			Nine Months Ended September 30, 1996		
	Pro forma Conseco before the Offering	Pro forma for the Offering	Pro forma for the Offering and other planned transactions	Pro forma Conseco before the Offering	Pro forma for the Offering	Pro forma for the Offering and other planned transactions
Pretax income from operations:						
Income before extraordinary charge.....	\$ 277.9	\$ 273.1	\$ 324.6	\$ 216.0	\$ 212.4	\$ 267.9
Add income tax expense.....	198.4	205.7	235.6	152.4	157.8	187.5
Add minority interest.....	37.7	56.1	43.5	32.6	46.4	32.5
	-----	-----	-----	-----	-----	-----
Pretax income.....	514.0	534.9	603.7	401.0	416.6	487.9
	-----	-----	-----	-----	-----	-----
Add fixed charges:						
Interest expense on annuities and financial products.....	758.5	758.5	758.8	549.5	549.5	549.5
Interest expense on long-term debt, including amortization.....	126.2	105.3	145.2	87.8	72.2	104.6
Interest expense on investment borrowings...	30.2	30.2	30.2	17.2	17.2	17.2
Other	1.0	1.0	1.0	.7	.7	.7
Portion of rental(1).....	6.9	6.9	6.9	5.8	5.8	5.8
	-----	-----	-----	-----	-----	-----
Fixed charges.....	922.8	901.9	942.1	661.0	645.4	677.8
	-----	-----	-----	-----	-----	-----
Adjusted earnings.....	\$1,436.8	\$1,436.8	\$1,545.8	\$1,062.0	\$1,062.0	\$1,165.7
	=====	=====	=====	=====	=====	=====
Ratio of earnings to fixed charges.....	1.56X	1.59X	1.64X	1.61X	1.65X	1.72X
	=====	=====	=====	=====	=====	=====
Ratio of earnings to fixed charges, excluding interest on annuities and financial products	4.13X	4.73X	4.29X	4.60X	5.34X	4.80X
	=====	=====	=====	=====	=====	=====
Fixed charges.....	\$ 922.8	\$ 901.9	\$ 942.1	\$ 661.0	\$ 645.4	\$ 677.8
Add dividends on preferred stock (multiplied by the rate of pretax income to income before minority interest and extraordinary charge).....	69.8	98.0	98.4	51.8	72.9	73.2
	-----	-----	-----	-----	-----	-----
Adjusted fixed charges.....	\$ 992.6	\$ 999.9	\$1,040.5	\$ 712.8	\$ 718.3	\$ 751.0
	=====	=====	=====	=====	=====	=====
Adjusted earnings.....	\$1,436.8	\$1,436.8	\$1,545.8	\$1,062.0	\$1,062.0	\$1,165.7
	=====	=====	=====	=====	=====	=====
Ratio of earnings to fixed charges and preferred dividends.....	1.45X	1.44X	1.49X	1.49X	1.48X	1.55X
	=====	=====	=====	=====	=====	=====
Ratio of earnings to fixed charges and preferred dividends, excluding interest on annuities and financial products.....	2.90X	2.81X	2.79X	3.14X	3.04X	3.06X
	=====	=====	=====	=====	=====	=====

(1) Interest portion of rental is assumed to be 33 percent.

EXHIBIT 23.9

RICHARDS, LAYTON & FINGER

One Rodney Square
P.O. Box 551
Wilmington, DE 19899

November 27, 1996

Conseco Financing Trust II
c/o Conseco, Inc.
11825 N. Pennsylvania Street
Carmel, IN 46032

Re: Conseco Financing Trust II

Ladies and Gentlemen:

We have acted as special Delaware counsel for Conseco, Inc., an Indiana corporation (the "Company"), and Conseco Financing Trust II, a Delaware business trust (the "Trust"), in connection with the matters set forth herein. Reference is hereby made to the Registration Statement (the "Registration Statement") on Form S-3, including a preliminary prospectus with respect to the Trust and certain other subsidiary trusts of the Company filed by the Company and the Trust with the Securities and Exchange Commission on October 29, 1996, and the Prospectus Supplement, dated November 22, 1996, with respect to the Trust (together with the Prospectus included in the Registration Statement, the "Prospectus"), relating to the Capital Trust Pass-through Securities of the Trust representing preferred undivided beneficial interests in the assets of the Trust.

We hereby consent to the use of our name under the heading "Legal Matters" in the Prospectus. In giving the foregoing consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Richards, Layton & Finger

RICHARDS, LAYTON & FINGER

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