GENWORTH FINANCIAL INC

FORM 8-K
(Current report filing)

Filed 11/14/06 for the Period Ending 11/07/06

Address	6620 WEST BROAD STREET
	RICHMOND, VA 23230
Telephone	804-281-6000
CIK	0001276520
Symbol	GNW
SIC Code	6311 - Life Insurance
Industry	Insurance (Life)
Sector	Financial
Fiscal Year	12/31

GENWORTH FINANCIAL INC

FORM 8-K
(Current report filing)

Filed 11/14/2006 For Period Ending 11/7/2006

Address	6620 WEST BROAD STREET
	RICHMOND, Virginia 23230
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CIK	0001276520
Industry	Insurance (Life)
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

November 7, 2006
Date of Report
(Date of earliest event reported)

GENWORTH FINANCIAL, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-32195**	**33-1073076**
(State or other jurisdiction of incorporation or organization)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**
6620 West Broad Street, Richmond, VA		**23230**
(Address of principal executive offices)		**(Zip Code)**

(804) 281-6000
(Registrant's telephone number, including area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On November 14, 2006, Genworth Financial, Inc. (the "Registrant") completed a public offering of $600,000,000 aggregate principal amount of the Registrant's 6.15% Fixed-to-Floating Rate Junior Subordinated Notes due 2066 (the "Notes"). The Notes are governed by an Indenture, dated as of November 14, 2006 (the "Base Indenture"), as supplemented by the First Supplemental Indenture, dated as of November 14, 2006 (the "First Supplemental Indenture"), each between the Registrant and The Bank of New York Trust Company, N.A., as trustee (the Base Indenture, as so supplemented by the First Supplemental Indenture, the "Indenture"). The Notes will bear interest on their principal amount from November 14, 2006 to but excluding November 15, 2016 at the annual rate of 6.15%, payable semi-annually in arrears, and from and including November 15, 2016 to but excluding November 15, 2066 at an annual rate equal to three-month LIBOR plus 2.0025%, payable quarterly in arrears. The Notes are redeemable on November 15, 2036, or thereafter, to the extent sufficient proceeds are raised from the sale of certain replacement capital securities, or on November 15, 2066 if the Registrant is unable to raise such proceeds.

The Notes were issued pursuant to an underwriting agreement (the "Underwriting Agreement"), dated as of November 7, 2006, between the Registrant and Morgan Stanley & Co. Incorporated, Deutsche Bank Securities Inc. and Goldman, Sachs & Co., as underwriters (the "Underwriters"). Pursuant to the Underwriting Agreement and subject to the terms and conditions expressed therein, the Registrant agreed to sell the Notes to the Underwriters, and the Underwriters agreed to purchase the Notes for resale to the public. The Registrant sold the Notes to the Underwriters at an issue price of 98.712% of the principal amount thereof, and the Underwriters offered the Notes to the public at a price of 99.712% of the principal amount thereof. The net proceeds of this offering were approximately $592 million. The Registrant intends to use approximately $319 million of the net proceeds to reduce its outstanding commercial paper borrowings and the remainder of the net proceeds for general corporate purposes.

On November 14, 2006, in connection with the completion of the offering of the Notes, the Registrant entered into a Replacement Capital Covenant (the "Replacement Capital Covenant"), whereby the Registrant agreed for the benefit of holders of a specified series of the Registrant's long-term indebtedness ranking senior to the Notes that the Notes will not be repaid, redeemed or repurchased by the Registrant on or before November 15, 2046, unless such repayment, redemption or repurchase is made from the proceeds of the issuance of certain replacement capital securities and pursuant to the other terms and conditions set forth in the Replacement Capital Covenant.

The Notes were offered and sold by the Registrant pursuant to its registration statement on Form S-3 (File No. 333-138437).

The foregoing descriptions of the Indenture, the Replacement Capital Covenant and the Underwriting Agreement do not purport to be complete and are qualified in their entirety by

reference to the full text of the Base Indenture, the First Supplemental Indenture, the Replacement Capital Covenant and the Underwriting Agreement, each of which is filed as an exhibit hereto and is incorporated by reference herein.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure contained and the exhibits identified in Item 1.01, "Entry into a Material Definitive Agreement," of this current report on Form 8-K are hereby incorporated by reference into this Item 2.03.

Item 8.01 Other Items.

On November 14, 2006, in connection with the issuance of the Notes, Weil, Gotshal & Manges LLP rendered an opinion regarding certain tax matters. A copy of that opinion is attached as Exhibit 8.1 to this report.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits.

The following are filed as exhibits to this report:

Number	Description
1.1	Underwriting Agreement, dated November 7, 2006, between Genworth Financial, Inc., and Morgan Stanley & Co. Incorporated, Deutsche Bank Securities Inc. and Goldman, Sachs & Co., as the several underwriters.
4.1	Indenture, dated as of November 14, 2006, between Genworth Financial, Inc. and The Bank of New York Trust Company, N.A., as Trustee.
4.2	First Supplemental Indenture, dated as of November 14, 2006, between Genworth Financial, Inc. and The Bank of New York Trust Company, N.A., as Trustee.
8.1	Tax Opinion of Weil, Gotshal & Manges LLP.
10.1	Replacement Capital Covenant, dated November 14, 2006.
23.1	Consent of Weil, Gotshal & Manges LLP (included in Exhibit 8.1 to this current report).

SIGNATURES

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

GENWORTH FINANCIAL, INC.

By: /s/ Scott R. Lindquist
Scott R. Lindquist
Vice President and Controller

Date: November 14, 2006

EXHIBIT INDEX

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Exhibit 1.1

EXECUTION COPY

$600,000,000

GENWORTH FINANCIAL, INC.

6.15% Fixed-to-Floating Rate Junior Subordinated Notes due 2066

UNDERWRITING AGREEMENT

November 7, 2006

November 7, 2006

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005

Goldman, Sachs & Co.
85 Broad Street
New York, NY 10004

Dear Sirs and Mesdames:

Genworth Financial, Inc., a Delaware corporation (the " **Company** "), proposes, subject to the terms and conditions stated herein, to issue and to sell to Morgan Stanley & Co. Incorporated, Deutsche Bank Securities Inc. and Goldman, Sachs & Co., as underwriters (the " **Underwriters** "), U.S. $600,000,000 principal amount of 6.15% Fixed-to-Floating Rate Junior Subordinated Notes due 2066 (the " **Notes** "). The Notes will be issued pursuant to an Indenture to be dated as of November 14, 2006 (the " **Base Indenture** "), between the Company and The Bank of New York Trust Company, N.A., as indenture trustee (the " **Trustee** "), as supplemented by the First Supplemental Indenture to be dated as of November 14, 2006 (the " **First Supplemental Indenture** ") between the Company and the Trustee. The Base Indenture, as supplemented by the First Supplemental Indenture, is referred to herein as the " **Indenture** ."

The Company has filed with the Securities and Exchange Commission (the " **Commission** ") a registration statement, including a prospectus, on Form S–3 (File No. 333-138437), relating to securities, including the Notes, to be issued from time to time by the Company. The registration statement as amended to the date of this Agreement is hereinafter referred to as the " **Registration Statement** ," and the related prospectus covering the Notes dated November 3, 2006 is hereinafter referred to as the " **Base Prospectus** ." For purposes of this Agreement, " **Prospectus** " means the final prospectus relating to the Notes, including any prospectus supplement thereto relating to the Notes, as filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations under the Securities Act of 1933, as amended (the " **Securities Act** "), and the term " **preliminary prospectus** " means the Base Prospectus, as supplemented by the Preliminary Prospectus Supplement dated November 7, 2006.

For purposes of this Agreement, " **free writing prospectus** " has the meaning set forth in Rule 405 under the Securities Act and " **Time of Sale Prospectus** " means the Base Prospectus and the preliminary prospectus, together with the free writing prospectuses, if any, each identified on Schedule II hereto (which shall not include any Electronic Road Show as defined in Section 1(b) hereof). As used herein, the terms "Registration Statement," "preliminary prospectus," "Time of Sale Prospectus" and Prospectus shall include the documents, if any, incorporated by reference therein. The terms " **supplement** ," " **amendment** ," and " **amend** " as used herein with respect to the Registration Statement, the Base Prospectus, the Time of Sale Prospectus, the preliminary prospectus or any free writing prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the " **Exchange Act** "), that are incorporated by reference therein.

In addition, the Company will enter into a Replacement Capital Covenant to be dated November 14, 2006 (the " **Replacement Capital Covenant** ") (as described in the Time of Sale Prospectus and the Prospectus) for the benefit of a specified class of Covered Debtholders (as defined in the Replacement Capital Covenant) pursuant to which the Company will covenant (on its own behalf and on behalf of its subsidiaries) not to redeem, repurchase or purchase, as applicable, the Notes on or before November 15, 2046, unless the Company complies with certain specified conditions.

1. *Representations and Warranties of the Company* . The Company represents and warrants to and agrees with each of the Underwriters, as of the date hereof, that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the Company's knowledge, threatened by the Commission. The Company is eligible to use the Registration Statement as an "automatic shelf registration statement" (as defined in Rule 405 under the Securities Act), and the Company has not received notice from the Commission objecting to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii)

the Registration Statement, when it became effective, did not contain, and, as amended or supplemented, if applicable, will not contain any 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, (iii) the Registration Statement, the preliminary prospectus and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (iv) the Time of Sale Prospectus does not, and at the time of each sale of the Notes in connection with the offering at or prior to the Closing Date (as defined in Section 4), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (v) any "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission (each such road show, an " **Electronic Road Show** "), when considered together with the Time of Sale Prospectus, does not, and at the time of each sale of the Notes in connection with the offering at or prior to the Closing Date (as defined in Section 4), any such Electronic Road Show, when considered together with the Time of Sale Prospectus, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (vi) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Underwriters expressly for use therein.

(c) The Company is a "well-known seasoned issuer" (as defined in Rule 405 under the Securities Act) and is not an "ineligible issuer" (as defined in Rule 405 under the Securities Act) in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or

on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule II hereto, and Electronic Road Shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.

(d) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and to enter into and perform its obligations under this Agreement, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(e) Each subsidiary of the Company set forth on Schedule III hereto (each, a " **Designated Subsidiary** " and, collectively, the " **Designated Subsidiaries** ") has been duly incorporated or formed, is validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, has the full power and authority to own its property and to conduct its business as currently conducted and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each Designated Subsidiary owned directly or indirectly by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except as described in the Prospectus; for purposes of this Agreement, Schedule III hereto includes each subsidiary of the Company that is a "significant subsidiary" (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Commission).

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

(g)(A) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the

Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant will not contravene (i) any provision of applicable law or the certificate of incorporation or by-laws of the Company, (ii) any agreement or other instrument binding upon the Company or any of its subsidiaries (except to the extent such contravention would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole), or (iii) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, and (B) no consent, approval, authorization or order of, or qualification with, any U.S. federal, state or local governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant, except such as has been obtained and as may be required to be obtained by the Company under the securities or Blue Sky laws of the various states in connection with the offer and sale of the Notes.

(h) The Notes have been duly authorized by the Company, and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with this Agreement, will constitute valid and binding obligations of the Company, entitled to the benefits provided by the Indenture, and enforceable against the Company in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to, or affecting, creditors' rights and to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The Notes will conform in all material respects to the description thereof contained in each of the Time of Sale Prospectus and the Prospectus.

(i) The Base Indenture and the First Supplemental Indenture have been duly authorized by the Company and duly qualified under the Trust Indenture Act, and when each of the Base Indenture and the First Supplemental Indenture is executed and delivered by the Company (assuming due authorization, execution and delivery of each of the Base Indenture and First Supplemental Indenture by the Trustee), the Indenture will constitute a valid and binding instrument of the Company, enforceable against the Company in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to, or affecting, creditors' rights and to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The Indenture will conform in all material respects to the description thereof contained in each of the Time of Sale Prospectus and the Prospectus.

(j) The Replacement Capital Covenant has been duly authorized by the Company, and when executed and delivered by the Company, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to, or affecting, creditors' rights and to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The Replacement Capital Covenant will conform in all material respects to the description thereof contained in each of the Time of Sale Prospectus and the Prospectus.

(k) Neither the Company nor any of its Designated Subsidiaries is in violation of its certificate of incorporation, by-laws or other constituent documents; neither the Company nor any of its subsidiaries is in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any agreement or other instrument binding upon the Company or any of its subsidiaries, except to the extent such default would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(l) There has not occurred any material adverse change in the financial condition or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus.

(m) There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement or the Prospectus and are not so described therein and there are no statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required. The Time of Sale Prospectus contains in all material respects the same description of the foregoing matters contained in the Prospectus.

(n) The preliminary 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 Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

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

(p) Except as described in the Time of Sale Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Notes registered pursuant to the Registration Statement.

(q) Subsequent to the date as of which information is given in the Time of Sale Prospectus, (i) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, or entered into any material transaction not in the ordinary course of business; (ii) the Company has not purchased any of its outstanding capital stock (other than any such purchases pursuant to the Company's publicly-announced stock repurchase program), or declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, except in each case as described or otherwise contemplated in the Time of Sale Prospectus.

(r) The Company and its Designated Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Prospectus or would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole; and any real property and buildings held under lease by the Company and its Designated Subsidiaries are held by them under valid, subsisting and enforceable leases except such as are described in the Time of Sale Prospectus or would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(s) The Company and its Designated Subsidiaries own or possess, or can acquire on reasonable terms, all material patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade

names currently employed by them in connection with the business now operated by them, except where the failure to so own, possess or be able to acquire on reasonable terms would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its Designated Subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, singly or in the aggregate, would have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(t) No labor dispute with the employees of the Company or any of its subsidiaries exists, except as described in the Time of Sale Prospectus, or, to the knowledge of the Company, is imminent, except where such dispute would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(u) Each Designated Subsidiary of the Company that is engaged in the business of insurance or reinsurance (each an " **Insurance Subsidiary** ", collectively the " **Insurance Subsidiaries** ") is licensed or authorized to conduct an insurance or reinsurance business, as the case may be, under the insurance statutes of each jurisdiction in which the conduct of its business requires such licensing or authorization, except for such jurisdictions in which the failure of the Insurance Subsidiary to be so licensed or authorized would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole. The Insurance Subsidiaries have made all required filings under applicable insurance statutes in each jurisdiction where such filings are required, except for such filings the failure of which to make would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole. Each of the Insurance Subsidiaries has all other necessary authorizations, approvals, orders, consents, certificates, permits, registrations and qualifications (" **Authorizations** "), of and from all insurance regulatory authorities necessary to conduct their respective existing businesses as described in the Time of Sale Prospectus, except where the failure to have such Authorizations would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and no Insurance Subsidiary has received any notification from any insurance regulatory authority to the effect that any additional Authorizations are needed to be obtained by any Insurance Subsidiary in any case where it could reasonably be expected that the failure to obtain such additional Authorizations or the limiting of the writing of such business would have a material adverse effect on the Company and its subsidiaries, taken as a whole, and no insurance regulatory authority having jurisdiction over any Insurance Subsidiary has

issued any order or decree impairing, restricting or prohibiting (i) the payment of dividends by any Insurance Subsidiary to its parent, other than those restrictions applicable to insurance or reinsurance companies under such jurisdiction generally, or (ii) the continuation of the business of the Company or any of the Insurance Subsidiaries in all material respects as presently conducted, in each case except where such orders or decrees would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(v) Except as described in the Time of Sale Prospectus, (i) all ceded reinsurance and retrocessional treaties, contracts, agreements and arrangements (" **Reinsurance Contracts** ") to which the Company or any Insurance Subsidiary is a party and as to which any of them reported recoverables, premiums due or other amounts in its most recent statutory financial statements are in full force and effect, except where the failure of such Reinsurance Contracts to be in full force and effect would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and (ii) neither the Company nor any Insurance Subsidiary has received any notice from any other party to any Reinsurance Contract that such other party intends not to perform such Reinsurance Contract in any material respect, and the Company has no knowledge that any of the other parties to such Reinsurance Contracts will be unable to perform its obligations thereunder in any material respect, except where (A) the Company or the Insurance Subsidiary has established reserves in its financial statements which it deems adequate for potential uncollectible reinsurance or (B) such nonperformance would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(w) Except as described in the Time of Sale Prospectus, the Company has no knowledge of any threatened or pending downgrading of the Company's or any of its subsidiaries' claims-paying ability rating or financial strength rating by A.M. Best Company, Inc., Standard & Poor's Rating Group, Moody's Investor Service, Inc., Fitch Ratings, Ltd. or any other "nationally recognized statistical rating organizations," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, which currently has publicly released a rating of the claims-paying ability or financial strength of the Company or any subsidiary.

(x) The Company and each of its Designated Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in

conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(y) The statements set forth in (i) the Time of Sale Prospectus under the captions "Description of Notes" and "Description of Replacement Capital Covenant", insofar as they purport to constitute a summary of the terms of the Indenture, the Notes and the Replacement Capital Covenant, as the case may be, and "United States Federal Income Tax Consequences," (ii) the Company's Annual Report on Form 10-K for the year ended December 31, 2005 under the captions "Item 1. Business – Regulation" and "Item 3. Legal Proceedings," (iii) the Company's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2006, June 30, 2006 and September 30, 2006 under the captions "Part II.—Other Information—Item 1. Legal Proceedings," (iv) the Company's Proxy Statement for the Company's 2006 annual meeting of stockholders under the caption "Certain Relationships and Transactions" and (v) the Registration Statement in Item 15, insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly summarize in all material respects the matters described therein.

(z) KPMG LLP, whose report is included in the Prospectus, is an independent registered public accounting firm with respect to the Company and its consolidated subsidiaries within the meaning of the Securities Act and the rules and regulations adopted by the Commission thereunder. The financial statements of the Company and its consolidated subsidiaries (including the related notes and supporting schedules) included in the Registration Statement, the Time of Sale Prospectus and the Prospectus present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby at the dates and for the periods indicated and have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis throughout the periods indicated and conform in all material respects with the rules and regulations adopted by the Commission under the Securities Act; and the supporting schedules included in the Registration Statement present fairly in all materials respects the information required to be stated therein.

2. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase, severally and not jointly, from the

Company, at a purchase price (the " **Purchase Price** ") of 98.712% of the principal amount of the Notes, plus accrued interest, if any, from November 14, 2006 to the Closing Date (as defined in Section 4) in the respective principal amount of Notes set forth opposite the names of the Underwriters in Schedule I hereto.

3. *Terms of Public Offering* . The Company is advised by the Underwriters that the Underwriters propose to make a public offering of their respective portions of the Notes as soon after this Agreement has become effective as in the Underwriters' judgment is advisable. The Company is further advised by the Underwriters that the Notes are to be offered to the public initially at a price (the " **Public Offering Price** ") equal to 99.712% of the principal amount of the Notes, plus accrued interest, if any, and may be offered to certain dealers selected by the Underwriters at a price that represents a concession not in excess of 0.60% of the principal amount of the Notes. Any such dealers may resell any Notes purchased from the Underwriters to certain other brokers or dealers at a discount not to exceed 0.30% of the principal amount of the Notes. After the initial public offering of the Notes to the public, the Underwriters may change the Public Offering Price and concessions.

4. *Payment and Delivery.* The Company will deliver against payment of the Purchase Price the Notes in the form of permanent global securities (the " **Global Securities** ") deposited with the Trustee as custodian for The Depository Trust Company (" **DTC** ") and registered in the name of Cede & Co., as nominee for DTC. Interests in any permanent Global Securities will be held only in book-entry form through DTC, except in the limited circumstances described in the Time of Sale Prospectus. Payment for the Notes shall be made by the Underwriters in immediately available funds by wire transfer to an account specified by the Company drawn to the order of the Company at the office of Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, at 9:00 A.M. (New York time) on November 14, 2006, or at such other time not later than seven full business days as the Underwriters and the Company determine, such time being referred to as the " **Closing Date** ," against delivery to the Trustee as custodian for DTC of the Global Securities representing all of the Notes. The Global Securities will be made available for checking at the above office of Davis Polk & Wardwell at least 24 hours prior to the Closing Date.

5. *Conditions to the Underwriters' Obligations* . The several obligations of the Underwriters are subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential

downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities or the Company's financial strength or claims-paying ability by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any material adverse change in the financial condition or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 5(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion and letter of Weil, Gotshal & Manges LLP, outside U.S. counsel for the Company, dated the Closing Date, as set forth in Exhibits A-1 and A-2.

(d) The Underwriters shall have received on the Closing Date an opinion of LeBoeuf, Lamb, Greene & MacRae, L.L.P., special U.S. regulatory counsel for the Company, dated the Closing Date, as set forth in Exhibit B.

(e) The Underwriters shall have received on the Closing Date an opinion of Leon E. Roday, Esq., the Company's General Counsel, dated the Closing Date, as set forth in Exhibit C.

(f) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell, counsel for the Underwriters, dated the Closing Date, with respect to such matters as the Underwriters shall request.

The opinions of Weil, Gotshal & Manges LLP, LeBoeuf, Lamb, Greene & MacRae, L.L.P. and Leon E. Roday, Esq., described in Sections 5(c)- 5(e) above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(g) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from KPMG LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

6. *Covenants of the Company* . The Company covenants with each Underwriter as follows:

(a) To furnish to the Underwriters, without charge, three signed copies of the Registration Statement (including exhibits thereto) and to furnish to the Underwriters in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement or as promptly as practicable thereafter and during the period mentioned in Section 6(e) or 6(f) below, as many copies of the Time of Sale Prospectus, the Prospectus and any supplements and amendments thereto or to the Registration Statement as the Underwriters may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus prior to the completion of the distribution of the Notes by the Underwriters, to furnish to the Underwriters a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which the Underwriters reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) To furnish to the Underwriters a copy of each proposed free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which the Underwriters reasonably object.

(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Notes at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with law.

(f) If, during such period after the first date of the public offering of the Notes as in the opinion of counsel for the Underwriters the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses the Underwriters will furnish to the Company) to which Notes may have been sold by the Underwriters on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof

the notice referred to in Rule 173(a) under the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law.

(g) To endeavor to qualify the Notes for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Underwriters shall reasonably request.

(h) To make generally available to the Company's security holders and to the Underwriters as soon as practicable an earning statement covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement, which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(i) If the third anniversary of the initial effective date of the Registration Statement occurs before all the Notes have been sold by the Underwriters, prior to the third anniversary to file a new shelf registration statement and to take any other action necessary to permit the public offering of the Notes to continue without interruption; references herein to the Registration Statement shall include the new registration statement declared effective by the Commission.

(j) During the period beginning on the date hereof and continuing to and including the Closing Date, not to offer, sell, contract to sell or otherwise dispose of any debt securities of the Company or warrants to purchase or otherwise acquire debt securities of the Company substantially similar to the Notes (other than (i) the Notes, (ii) commercial paper issued in the ordinary course of business or (iii) securities or warrants permitted with the prior written consent of the Underwriters with the authorization to release this lock-up).

(k) To prepare a final term sheet relating to the offering of the Notes, containing only information that describes the final terms of the Notes or the offering in a form consented to by the Underwriters, and to file such final term sheet within the period required by Rule 433(d)(5)(ii) under the Securities Act following the date the final terms have been established for the offering of the Notes.

(l) To pay any required Commission filing fees relating to the Notes within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

7. *Expenses.* Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Notes under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Notes to the Underwriters, (iii) the cost of printing or the reasonable fees of counsel in producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Notes under state securities laws and all expenses in connection with the qualification of the Notes for offer and sale under state securities laws as provided in Section 6(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incurred in connection with the review and qualification of the offering of the Notes by the National Association of Securities Dealers, Inc., (v) any fees charged by the rating agencies for the ratings of the Notes, (vi) the cost of printing certificates representing the Notes, (vii) the costs and charges of any indenture trustee, transfer agent, registrar or depositary, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Notes, including, without limitation, expenses associated with the production of any Electronic Road Show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show with the prior approval of the Company, and (ix) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 9 entitled "Indemnity and Contribution," and the last paragraph of Section 11 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, transfer taxes payable on resale of any of the Notes by them and any advertising expenses connected with any offers they may make.

8. *Covenants of the Underwriters* . The Underwriters covenant with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of the Underwriters that otherwise would not be required to be filed by the Company thereunder but for the action of the Underwriters (other than, for the avoidance of doubt, the final term sheet prepared by the Company and filed with the Commission pursuant to Section 6(k)). The Underwriters acknowledge and agree that, except as may be set forth in Schedule II hereto, the Company has not authorized or approved any "issuer information" (as defined in Rule 433(h)) for use in any free writing prospectus prepared by or on behalf of the Underwriters.

9. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, the preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, any Electronic Road Show or the Prospectus (if used within the period set forth in paragraph (f) of Section 6 hereof and as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Underwriters expressly for use therein.

(b) Each Underwriter agrees, severally but not jointly, to indemnify and hold harmless the Company, the directors and officers of the Company who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, the preliminary prospectus, the Time of Sale Prospectus, any other free writing

prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the Securities Act or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Underwriter furnished to the Company in writing by the Underwriters on behalf of such Underwriter expressly for use in the Registration Statement, the preliminary prospectus, the Time of Sale Prospectus, any other free writing prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the Securities Act or the Prospectus or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 9(a) or 9(b), such person (the " **indemnified party** ") shall promptly notify the person against whom such indemnity may be sought (the " **indemnifying party** ") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Underwriters and all persons, if any who control any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act or who are affiliates of any Underwriter within the meaning of Rule 405 under the Securities Act, and (ii) the fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either such Section, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Underwriters and such control persons and affiliates of any Underwriters, such firm shall be designated in writing by the Underwriters. In the case of any such separate firm for the Company and such directors, officers and control persons of the Company, such firm shall be designated in writing by the

Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 9(a) or 9(b) is unavailable to an indemnified party in respect of any losses, claims, damages or liabilities referred to under such paragraph, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) if the indemnifying party is the Company, in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Notes, (ii) if the indemnifying person is an Underwriter, in such proportion as is appropriate to reflect the relative fault of such Underwriter on the one hand and the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities or (iii) if the allocation provided by clause 9(d)(i)or 9(d)(ii) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 9(d)(i) above or the relative fault referred to in clause 9(d)(ii) but also the relative fault (in cases covered by clause 9(d)(i)) or such relative benefits (in cases covered by clause 9(d)(ii)) of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Notes shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Notes (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Notes. The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the

Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 9 are several in proportion to the respective aggregate principal amount of Notes they have purchased hereunder, and not joint.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 9 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 9(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 9(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Notes underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 9 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter, by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Notes.

10. *Termination* . The Underwriters may terminate this Agreement by notice given by the Underwriters to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading in securities generally on the New York Stock Exchange shall have been suspended or materially limited, (ii) a general moratorium on commercial banking activities in the State of New York or the United States shall have been declared by Federal or New York State authorities, or (iii) there shall have occurred any material outbreak, or material escalation, of hostilities or other national or international

calamity or crisis, of such magnitude and severity in its effect on the financial markets of the United States, in the reasonable judgment of the Underwriters, as to prevent or materially impair the marketing, or enforcement of contracts for sale, of the Notes.

11. *Effectiveness; Defaulting Underwriters* . This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date, any one or more of the Underwriters shall fail or refuse to purchase Notes that it has or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Notes which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of the Notes to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the principal amount of Notes set forth opposite their respective names in Schedule I bears to the aggregate principal amount of Notes set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the Underwriters may specify, to purchase the Notes which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the principal amount of Notes that any Underwriter has agreed to purchase on such date pursuant to this Agreement be increased pursuant to this Section 11 by an amount in excess of one-ninth of such principal amount of Notes without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Notes and the aggregate principal amount of Notes with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Notes to be purchased, and arrangements satisfactory to the Underwriters and the Company for the purchase of such Notes are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either the Underwriters or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any one of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel)

reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

12. *Counterparts* . This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. *Applicable Law* . This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *Headings* . The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

15. *Nature of Underwriters' Obligations* . The Company acknowledges that in connection with the offering of the Notes: (a) the Underwriters have acted at arms length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (b) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (c) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Notes.

16. *Entire Agreement* . This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Notes, represents the entire agreement between the Company, on the one hand, and the Underwriters, on the other, with respect to the preparation of the preliminary prospectus, the Time of Sale Prospectus, the Prospectus, and the conduct of the offering, and the purchase and sale of the Notes.

Very truly yours,

GENWORTH FINANCIAL, INC.

By: /s/ Gary Prizzia
Name: Gary Prizzia
Title: Vice President and Treasurer

Accepted as of the date hereof

MORGAN STANLEY & CO. INCORPORATED
DEUTSCHE BANK SECURITIES INC.
GOLDMAN, SACHS & CO.

Acting severally on behalf of itself and the several
Underwriters named in Schedule I hereto.

By: MORGAN STANLEY & CO. INCORPORATED

By: /s/ Michael Fusco
Name: Michael Fusco
Title: Executive Director

By: DEUTSCHE BANK SECURITIES INC.

By: /s/ Mary Hardgrove
Name: Mary Hardgrove
Title: Director

By: GOLDMAN, SACHS & CO.

By: /s/ Goldman, Sachs & Co.
(Goldman, Sachs & Co.)

SCHEDULE I

Underwriter	Principal Amount of Notes To Be Purchased
Morgan Stanley & Co. Incorporated	$ 200,000,000
Deutsche Bank Securities Inc.	200,000,000
Goldman, Sachs & Co.	200,000,000
Total:	$ 600,000,000

SCHEDULE II

Free Writing Prospectuses

1. Pricing Term Sheet (attached hereto as an Exhibit)

SCHEDULE III

LIST OF DESIGNATED SUBSIDIARIES

Designated Subsidiaries	Jurisdiction of Incorporation
Federal Home Life Insurance Company	(Virginia)
First Colony Life Insurance Company	(Virginia)
GEMIC Holdings Company	(Canada)
Genworth Financial International Holdings, Inc.	(Delaware)
Genworth Financial Mortgage Insurance Company Canada	(Canada)
Genworth Life and Annuity Insurance Company	(Virginia)
Genworth Life Insurance Company	(Delaware)
Genworth Mortgage Holdings, LLC	(North Carolina)
Genworth Mortgage Insurance Corporation	(North Carolina)
GNA Corporation	(Washington)

EXHIBIT A-1

FORM OF U.S. COMPANY COUNSEL OPINION

1. The Company has been duly incorporated, is a corporation validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as described in the Time of Sale Prospectus.

2. Each of Genworth Financial International Holdings, Inc., Genworth Life Insurance Company and Genworth Life Insurance Company of New York (each, a " **Subsidiary** ") is a corporation validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

3. All the outstanding shares of capital stock of each Subsidiary are owned of record by the Company or one of its subsidiaries. To our knowledge, such shares are also owned beneficially by the Company or one of its subsidiaries and are free and clear of all adverse claims, limitations on voting rights, options and other encumbrances.

4. The Company has all requisite corporate power and authority to execute and deliver the Underwriting Agreement and to perform its obligations thereunder. The execution, delivery and performance of the Underwriting Agreement by the Company have been duly authorized by all necessary corporate action on the part of the Company.

5. The execution and delivery by the Company of the Underwriting Agreement, the Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant and the performance by the Company of its obligations thereunder will not conflict with, constitute a default under or violate (i) any of the terms, conditions or provisions of the Certificate of Incorporation or by-laws of the Company, (ii) any of the terms, conditions or provisions of any document, agreement or other instrument filed as an exhibit to the Registration Statement, (iii) the laws of the State of New York, the corporate laws of the State of Delaware or federal law or regulation (other than federal and state securities or Blue Sky laws or insurance statutes or regulations, as to which we express no opinion in this paragraph), or (iv) any judgment, writ, injunction, decree, order or ruling of any court or governmental authority binding on the Company or any of its subsidiaries of which we are aware.

6. The Base Indenture and the First Supplemental Indenture have been duly qualified under the Trust Indenture Act of 1939, as amended. The Base

Indenture and the First Supplemental Indenture have been duly authorized, executed and delivered by the Company, and assuming due authorization, execution and delivery by the Trustee, the Indenture is a valid and binding agreement of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

7. The Notes have been duly authorized by the Company and, assuming due execution and authentication by the Trustee in accordance with the provisions of the Indenture, are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity), and will be entitled to the benefits of the Indenture.

8. The Replacement Capital Covenant has been duly authorized by the Company, and when the Replacement Capital Covenant is executed and delivered by the Company, Section 2 of the Replacement Capital Covenant will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to, or affecting, creditors' rights and to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

9. No consent, approval, waiver, license or authorization or other action by or filing with any federal, New York or Delaware corporate governmental authority is required in connection with the execution and delivery by the Company of the Underwriting Agreement, the Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant and the consummation by the Company of the transactions contemplated hereby or the performance by the Company of its obligations thereunder, except for those in connection with federal and state securities or Blue Sky laws or insurance statutes or regulations, as to which we express no opinion in this paragraph, and those already obtained or made.

10. The statements set forth in (A) the Time of Sale Prospectus and the Prospectus under the captions “Description of Notes,” “Description of Replacement Capital Covenant,” and “United States Federal Income Tax Consequences”, (B) the Proxy Statement for the Company’s 2006 annual meeting of stockholders under the caption “Certain Relationships and Transactions” and (C) the Registration Statement in response to the requirements of Item 15 of Form S-3, insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, fairly present the information required with respect to such legal matters, documents and proceedings and fairly summarize the matters referred to therein in all material respects.

11. To our knowledge, there are no legal or governmental proceedings pending or overtly threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement or the Prospectus and are not so described or any contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed or incorporated by reference as exhibits to the Registration Statement that are not described, filed or incorporated as required.

12. The Registration Statement has become effective under the Securities Act, and we are not aware of any stop order suspending the effectiveness of the Registration Statement.

EXHIBIT A-2

FORM OF U.S. COMPANY COUNSEL LETTER

The primary purpose of our professional engagement was not to establish or confirm factual matters or financial or quantitative information, and many determinations involved in the preparation of the Registration Statement, the Time of Sale Prospectus and Prospectus are of a non-legal character. In addition, we have not undertaken any obligation to verify independently any of the factual matters set forth in the Registration Statement, the Time of Sale Prospectus and Prospectus. Consequently, in this letter we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Time of Sale Prospectus and Prospectus. Also, we do not make any statement herein with respect to any of the financial statements and related notes thereto, the financial statement schedules or the financial, statistical or accounting data contained in the Registration Statement, the Time of Sale Prospectus and Prospectus.

We have reviewed the Registration Statement, the Time of Sale Prospectus and Prospectus and we have participated in conferences with representatives of the Company, its independent public accountants, its special insurance regulatory counsel, its local counsel, you and your counsel, at which conferences the contents of the Registration Statement, the Time of Sale Prospectus and Prospectus and related matters were discussed.

Subject to the foregoing, we confirm to you that, on the basis of the information we gained in the course of performing the services referred to above, no facts have come to our attention which cause us to believe that (i) the Registration Statement, as of the effective date, or the Prospectus, as of its date, do not comply as to form in all material respects with the requirements of the Securities Act of 1933, as amended, and the Rules and Regulations thereunder, (ii) the Registration Statement, as of the effective date thereof, 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 contained therein not misleading, (iii) the Time of Sale Prospectus, as of the date of the Underwriting Agreement, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (iv) the Prospectus, as of its date or as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

EXHIBIT B

FORM OF U.S. COMPANY REGULATORY COUNSEL OPINION

1. Each subsidiary listed in Schedule A hereto (an **"Insurance Subsidiary"**) has the necessary permits, licenses and authorizations under the insurance laws and regulations of the jurisdiction set forth opposite such Insurance Subsidiary's name on Schedule A hereto to conduct the lines of insurance business set forth opposite such Insurance Subsidiary's name on Schedule A hereto, except where the failure to have such permits, licenses or authorizations would not reasonably be expected to, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

2. The Company is not, and after giving effect to the offering and sale of the Notes and the application of the net proceeds from such sale as described in the Prospectus under the caption "Use of Proceeds" will not be, required to register as an "investment company," as such term is defined in the Investment Company Act of 1940.

3. The statements set forth in the Annual Report on Form 10-K for the year ended December 31, 2005 under the captions "Item 1. Business—Regulation," and "Item 1A. Risk Factors—Risks Relating to Our Mortgage Insurance Segment," and the Proxy Statement under the caption "Certain Relationships and Transactions—Reinsurance Transactions," insofar as such statements purport to describe provisions of documents referred to therein, the Federal laws of the United States of America, the laws of the State of New York or the insurance laws and regulations of the Connecticut, Delaware, New York, North Carolina, South Carolina, Texas, Virginia and Wisconsin, fairly summarize such provisions or such laws in all material respects.

SCHEDULE A TO EXHIBIT B

	Insurance Subsidiaries	Jurisdiction of Domicile	Lines of Insurance Business
1.	American Mayflower Life Insurance Company of New York	New York	Life, Annuities and Accident and Health Insurance
2.	Federal Home Life Insurance Company	Virginia	Life, Annuities, Credit Accident and Sickness, Credit Life and Accident and Sickness
3.	FFRL Re Corp.	Virginia	Life, Annuities, Accident and Sickness, Variable Life and Variable Annuities
4.	First Colony Life Insurance Company	Virginia	Life, Credit Life, Annuities, Accident and Sickness, Industrial Life, Variable Life, Variable Annuities, Credit Accident and Sickness
5.	GE Group Life Assurance Company	Connecticut	Accident and Health, Reinsurance, Life Non-Participating
6.	Genworth Home Equity Insurance Corporation	North Carolina	Credit Insurance, subject to the following limitations: Restricted, no new business
7.	Genworth Life and Annuity Insurance Company	Virginia	Life, Credit Life, Annuities, Accident and Sickness, Industrial Life, Variable Life, Variable Annuities, Credit Accident and Sickness
8.	Genworth Life Insurance Company	Delaware	Life, including annuities, Variable Annuities and Health
9.	Genworth Life Insurance Company of New York	New York	Life, Annuities and Accident and Health Insurance
10.	Genworth Mortgage Insurance Corporation	North Carolina	Credit Insurance

Insurance Subsidiaries	Jurisdiction of Domicile	Lines of Insurance Business
11. Genworth Mortgage Insurance Corporation of North Carolina	North Carolina	Credit Insurance
12. Genworth Mortgage Reinsurance Corporation	North Carolina	Credit Insurance, subject to the following limitations: Restricted, no new business
13. Genworth Residential Mortgage Insurance Corporation of North Carolina	North Carolina	Credit Insurance
14. Jamestown Life Insurance Company	Virginia	Life, Credit Life, Annuities, Accident and Sickness, Industrial Life, Variable Life, Variable Annuities, Credit Accident and Sickness
15. Private Residential Mortgage Insurance Corporation	North Carolina	Credit Insurance
16. Professional Insurance Company	Texas	Life; Accident and Health
17. River Lake Insurance Company	South Carolina	Reinsurance of specified risks from First Colony Life Insurance Company
18. River Lake Insurance Company II	South Carolina	Reinsurance of specified risks from First Colony Life Insurance Company
19. River Lake Insurance Company III	South Carolina	Reinsurance of specified risks from First Colony Life Insurance Company
20. Rivermont Life Insurance Company I	South Carolina	Reinsurance of specified risks from First Colony Life Insurance Company
21. Verex Assurance, Inc.	Wisconsin	Mortgage Insurance

EXHIBIT C

FORM OF COMPANY GENERAL COUNSEL OPINION

1. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

2. Each Designated Subsidiary of the Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation or formation, has the full power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

3. All of the issued shares of capital stock of the Company and each Designated Subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned, with respect to each Designated Subsidiary, directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

4. The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Underwriting Agreement, the Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant will not contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or, any of the terms, conditions or provisions of any document, agreement or other instrument filed as an exhibit to the Registration Statement, or, to the best of my knowledge, any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any of its subsidiaries, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under the Underwriting Agreement, the Base Indenture, the First Supplemental Indenture, the Notes and the Replacement Capital Covenant, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Notes.

5. The Company and each Designated Subsidiary of the Company that is engaged in the business of insurance or reinsurance (each an " **Insurance Subsidiary** ", collectively the " **Insurance Subsidiaries** ") are duly licensed to conduct an insurance or reinsurance business, as the case may be, under the insurance statutes of each jurisdiction in which the conduct of its business requires such licensing, except for such jurisdictions in which the failure of the Company or the Insurance Subsidiaries to be so licensed would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

6. The statements set forth in the Annual Report on Form 10-K for the year ended December 31, 2005 and in the Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2006, June 30, 2006 and September 30, 2006 under the captions "Legal Proceedings" and "Management's Discussion and Analysis of Financial Condition and Results of Operations-Overview-Our corporate reorganization", in each case insofar as such statements constitute summaries of the legal matters, documents or proceedings referred to therein, as of the date such reports were filed with the Securities and Exchange Commission and as of the date hereof (with respect to the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2006), fairly presented or present the information called for with respect to such legal matters, documents and proceedings and fairly summarized or summarize the matters referred to therein in all material respects.

Exhibit 4.1

GENWORTH FINANCIAL, INC.

to

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

INDENTURE

Dated as of November 14, 2006

Subordinated Debt Securities

CROSS-REFERENCE TABLE

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of November 14, 2006.

TIA	**Indenture**
Section	**Section**
310(a)	6.11
(b)	6.10, 6.12
(c)	Not Applicable
311(a)	*
(b)	*
(c)	Not Applicable
312(a)	7.01, 7.02(a)
(b)	7.02(b)
(c)	7.02(c)
313(a)	7.03(a)
(b)	7.03(b)
(c)	7.03(b)
(d)	7.03(c)
314(a)	7.04
(b)	Not Applicable
(c)	1.02
(d)	Not Applicable
(e)	1.02

TIA	Indenture
Section	**Section**
(f)	Not Applicable
315(a)	6.01
(b)	5.16, 7.03(b)
(c)	6.01
(d)	6.01
(e)	5.14
316(a)(1)	5.12, 5.13
(b)	5.08
(c)	1.04(d)
317(a)(1)	5.03
(a)(2)	5.04
(b)	10.03
318(a)	1.07

* Automatically included under Section 318(c) of the Trust Indenture Act of 1939, as amended.

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE, dated as of November 14, 2006, between Genworth Financial, Inc., a Delaware corporation (herein called the "Company"), having its principal office at 6620 West Broad Street, Richmond, Virginia 23230, and The Bank of New York Trust Company, N.A., as trustee hereunder (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its subordinated unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 . *Definitions.*

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

(1) the terms defined in this article have the meanings assigned to them in this article and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

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

(4) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular article, section or other subdivision; and

(5) all references used herein to the male gender shall include the female gender.

“ **Act** ,” when used with respect to any Holder, has the meaning specified in Section 1.04.

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

“ **applicants** ” has the meaning specified in Section 7.02.

“Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 6.13 to act on behalf of the Trustee to authenticate Securities.

“ **Board of Directors** ” means either the board of directors of the Company or any duly authorized committee of that board duly authorized to act hereunder.

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

“ **Business Day** ” means, with respect to any Security, a day that in the City of New York or in any Place of Payment is not a day on which banking institutions are authorized by law or regulation to close.

“ **Capital Stock** ” for any entity means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) shares issued by that entity.

“ **Certificated Securities** ” means Securities that are in registered definitive form and that are not Global Securities.

“ **Commission** ” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

" **Common Stock** " means the shares of Class A common stock, $0.001 par value per share, of the Company existing on the date of this Indenture or any shares of Capital Stock of the Company into which such shares of Class A Common Stock shall be reclassified or changed.

" **Company** " means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

" **Company Request** " or " **Company Order** " means a written request or order signed in the name of the Company by its chairman of the Board of Directors, a chief executive officer, a vice chairman of the Board of Directors, its president or a vice president, and by its treasurer, an assistant treasurer, its comptroller, its secretary or an assistant secretary, and delivered to the Trustee.

" **Corporate Trust Office** " means the office of the Trustee at which at any particular time this Indenture shall be administered, which office, at the time of the execution of this Indenture, is located, at The Bank of New York Trust Company, N.A., 227 West Monroe Street, Suite 2600, Chicago, Illinois 60606, Attn: Corporate Finance.

" **Defaulted Interest** " has the meaning specified in Section 3.07.

" **Depositary** " means, unless otherwise specified by the Company pursuant to either Section 2.03 or 3.01, with respect to Securities of any series issuable or issued as a Global Security, The Depository Trust Company, New York, New York, or any successor thereto registered under the Exchange Act, as amended, or other applicable statute or regulation.

" **Designated Senior Indebtedness** " means any Senior Indebtedness of the Company the principal amount of which is $20.0 million or more at the time of the designation of such Senior Indebtedness as "Designated Senior Indebtedness" by the Company, which designation shall be made in a written instrument delivered to the Trustee.

" **Enforcement Event** " has the meaning specified in Section 5.03.

" **Event of Default** " has the meaning specified in Section 5.01.

" **Exchange Act** " means the United States Securities Exchange Act of 1934, as amended, and rules and regulations promulgated by the Commission thereunder.

“ **Global Security** ” means a Security issued to evidence all or a part of any series of Securities which is executed by the Company and authenticated and delivered by the Trustee to the applicable Depositary or pursuant to the applicable Depositary’s instruction, all in accordance with this Indenture and pursuant to a Company Order, which shall be registered in the name of the applicable Depositary or its nominee.

“ **Holder** ” means a Person in whose name a Security is registered in the Security Register.

“ **Holder Action** ” has the meaning specified in Section 7.02(d).

“ **Indenture** ” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 3.01.

“ **Interest** ,” when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“ **Interest Payment Date** ,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“ **Maturity** ,” when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, unless otherwise specified pursuant to Section 3.01.

“ **Officers’ Certificate** ” means a certificate signed by the chairman of the Board of Directors, a vice-chairman of the Board of Directors, a chief executive officer, the president or a vice president, and by the treasurer, an assistant treasurer, the comptroller, the secretary or an assistant secretary, of the Company, and delivered to the Trustee.

“ **Opinion of Counsel** ” means a written opinion of counsel, who may be counsel for the Company and who shall be acceptable to the Trustee.

“ **Original Issue Discount Security** ” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02.

" **Outstanding** ," when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money or evidences of indebtedness (if permitted hereby) in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; *provided, however,* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities which have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

provided, however , that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 5.02 (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 3.01, (C) the principal amount of a Security denominated in one or more foreign currencies or composite currencies which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 3.01, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only

Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor. In case of a dispute as to such right, any decision by the Trustee shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the above-described Persons; and, subject to Section 6.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purposes of any such determination.

" **Paying Agent** " means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

" **Payment Blockage Notice** " has the meaning specified in Section 13.02(b).

" **Payment Blockage Period** " has the meaning specified in Section 13.02(b).

" **Permitted Junior Securities** " means:

(1) the Company's Capital Stock; or

(2) debt securities issued pursuant to a confirmed plan of reorganization that are subordinated in right of payment to all Senior Indebtedness and any debt securities issued in exchange for Senior Indebtedness to substantially the same extent as, or to a greater extent than, the Securities are subordinated to the Senior Indebtedness under this Indenture.

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

" **Place of Payment** ," when used with respect to the Securities of any series, means the place or places where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified as contemplated by Section 3.01.

“ **Predecessor Security** ” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“ **Preferred Stock** ” means shares of any class or series of preferred stock of the Company that may be issued and outstanding from time to time.

“ **Redemption Date** ,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

“ **Redemption Price** ,” when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“ **Regular Record Date** ” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.01.

“ **Responsible Officer** ,” when used with respect to the Trustee, means any officer of the Trustee assigned by the Trustee to administer its corporate trust matters with respect to this Indenture (which, for the avoidance of doubt, includes without limitation, any supplemental indenture hereto).

“ **Securities** ” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“ **Security Register** ” and “ **Security Registrar** ” have the respective meanings specified in Section 3.05.

“ **Senior Indebtedness** ,” unless otherwise specified in one or more indentures supplemental hereto or approved pursuant to a Board Resolution in accordance with Section 3.01, means:

(i) the principal (including redemption payments), premium, if any, interest and other payment obligations in respect of (A) indebtedness of the Company for money borrowed, (B) indebtedness evidenced by securities, debentures, bonds, notes or other similar instruments issued by the Company, including any such securities issued under any deed, indenture or other instrument to which the Company is a party and (C) guarantees of any of the foregoing;

(ii) all capital lease obligations of the Company;

(iii) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company, all hedging agreements and agreements of a similar nature thereto and all agreements relating to any such agreements, and all obligations of the Company under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(iv) all obligations of the Company for reimbursement on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction;

(v) all obligations of the type referred to in clauses (i) through (iv) above of other Persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise;

(vi) all obligations of the type referred to in clauses (i) through (v) above of other Persons secured by any lien on any property or asset of the Company (whether or not such obligation is assumed by the Company); and

(vii) any deferrals, amendments, renewals, extensions, modifications and refundings of all obligations of the type referred to in clauses (i) through (vi) above, in each case whether or not contingent and whether outstanding at the date hereof or thereafter incurred,

except, in each case, for the Securities and (w) any such other indebtedness or deferral, amendment, renewal, extension, modification or refunding that contains express terms, or is issued under a deed, indenture or other instrument that contains express terms, providing that it is subordinate to or ranks *pari passu* with the Securities, (x) trade accounts payable or accrued liabilities arising in the ordinary course of business, (y) indebtedness owed by the Company to its Subsidiaries, which also shall rank equally in right of payment and upon liquidation with the Securities and (z) any liability for Federal, state, local and other taxes owed or owing by the Company or its Subsidiaries.

Such Senior Indebtedness shall continue to be Senior Indebtedness and be entitled to the benefits of the subordination provisions of this Indenture irrespective of any amendment, modification or waiver of any term of such Senior Indebtedness and notwithstanding that no express written subordination agreement may have been entered into between the holders of such Senior Indebtedness and the Trustee or any of the Holders.

" **Special Record Date** " for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.07.

" **Stated Maturity** ," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“ **Subsidiary** ” means, with respect to any Person:

(1) any corporation or company a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is, at the date of determination, directly or indirectly, owned by such Person (a “subsidiary”), by one or more subsidiaries of such Person or by such Person and one or more subsidiaries of such Person;

(2) any partnership in which such Person or a subsidiary of such Person is, at the date of determination, a general partner of such partnership; or

(3) any partnership, limited liability company or other Person in which such Person, a subsidiary of such Person or such Person and one or more subsidiaries of such Person, directly or indirectly, at the date of determination, have (x) at least a majority ownership interest or (y) the power to elect or appoint or direct the election or appointment of the managing partner or member of such Person or, if applicable, a majority of the directors or other governing body of such Person.

“ **Trust Indenture Act** ” means the Trust Indenture Act of 1939, as amended, and in force at the date as of which this instrument was executed, except as provided in Section 9.03.

“ **Trustee** ” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“ **U.S. Government Obligations** ” means securities which are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as to the timely payment of principal and interest as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company which is a member of the Federal Reserve System and having a combined capital and surplus of at least $50,000,000 as custodian with respect to any such obligation evidenced by such depository receipt or a specific payment of interest on or principal of any such obligation held by such custodian for the

account of the holder of a depository receipt; *provided, however* , that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the obligation set forth in (i) or (ii) above or the specific payment of interest on or principal of such obligation evidenced by such depository receipt.

Section 1.02 . *Compliance Certificates and Opinions.* Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate required by Section 10.06) shall include:

(1) a statement that the Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and

(4) a statement as to whether, in the opinion of each such Person, such condition or covenant has been complied with.

Section 1.03 . *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters is erroneous. Any certificate of counsel or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04 . *Acts of Holders*. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may be proved in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in any reasonable manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register.

(d) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act or to revoke any of the foregoing, but the Company shall have no obligation to do so. Notwithstanding Trust Indenture Act Section 3.16(c), such record date shall be the record date specified

in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act or revocation may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of any such Act or revocation for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have acted; *provided, however* , that no such authorization, agreement or consent by such Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.05 . *Notices, Etc., to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Finance; or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, to the attention of the general counsel of the Company.

Section 1.06 . *Notice to Holders; Waiver.* Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in

any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

If the Company mails a notice to Holders, it shall mail a copy of such notice to the Trustee at the same time.

In case by reason of the suspension of regular mail service or by reason of any other case it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07 . *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required or deemed provision shall control.

Section 1.08 . *Effect of Headings and Table of Contents.* The article and section headings herein and the table of contents are for convenience only and shall not affect the construction hereof.

Section 1.09 . *Successors and Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 . *Separability Clause.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 . *GOVERNING LAW.* THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 1.13 . *Legal Holidays.* In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this

Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity; *provided* that no interest shall accrue on any amount payable on or at such date for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, to such next succeeding Business Day.

ARTICLE 2
SECURITY FORMS

Section 2.01 . *Forms Generally.* The Securities of each series shall be in substantially the forms established in one or more indentures supplemental hereto or approved from time to time by or pursuant to a Board Resolution in accordance with Section 3.01, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and any indenture supplemental hereto, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or securities regulatory authority or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the secretary or an assistant secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.03 for the authentication and delivery of such Securities.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.02. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication required by this article shall be in substantially the form set forth below.

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

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

By _____
Authorized Signatory"

Section 2.03 . *Securities Issuable in the Form of a Global Security.* (a) If the Company shall establish pursuant to Sections 2.01 and 3.01 that the Securities of a particular series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with Section 3.03 and the Company Order delivered to the Trustee thereunder, authenticate and deliver, such Global Security or Securities, which:

(i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Outstanding Securities of such series to be represented by such Global Security or Securities;

(ii) shall be registered in the name of the Depositary for such Global Security or Securities or its nominee;

(iii) shall be delivered by the Trustee to the Depositary or its custodian or pursuant to the Depositary's instruction; and

(iv) shall bear a legend substantially to the following effect:

"THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY OR A NOMINEE OF THE DEPOSITORY TRUST COMPANY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY TRUST COMPANY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TRUST COMPANY TO A NOMINEE OF THE DEPOSITORY TRUST COMPANY OR BY A NOMINEE OF THE DEPOSITORY TRUST COMPANY TO THE DEPOSITORY TRUST COMPANY OR ANOTHER NOMINEE OF THE DEPOSITORY TRUST COMPANY.

UNLESS THIS CERTIFICATE 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

CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(b) Notwithstanding any other provision of this Section 2.03 or of Section 3.05, unless the terms of a Global Security expressly permit such Global Security to be exchanged in whole or in part for individual Securities, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 3.05, only to the Depositary or another nominee of the Depositary for such Global Security, or to a successor Depositary for such Global Security selected or approved by the Company or to a nominee of such successor Depositary. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(c) (i) If at any time the Depositary for a Global Security notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time the Depositary for the Securities for the series represented by such Global Security shall no longer be eligible or in good standing under the Exchange Act or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to such Global Security. If a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute a Company Order for the authentication and delivery of Certificated Securities of such series in exchange for such Global Security, and the Trustee, upon receipt of such Company Order, will authenticate and deliver Certificated Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(ii) If an Event of Default or Enforcement Event shall have occurred and be continuing or an event shall have occurred which with the giving of notice or lapse of time or both, would constitute an Event of Default or Enforcement Event with respect to the Securities represented by such Global Security, the Trustee, upon receipt of a Company Order for the authentication and delivery of Certificated Securities of such series in exchange for such Global Security, will authenticate and deliver Certificated Securities of such series of like tenor and terms in definitive

form in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(iii) The Company may at any time and in its sole discretion and subject to the procedures of the Depositary determine that the Securities of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of Certificated Securities of such series in exchange in whole or in part for such Global Security, will authenticate and deliver Certificated Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities representing such series to be so exchanged for such Global Security or Securities.

(iv) If specified by the Company pursuant to Section 3.01 with respect to Securities issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security in exchange in whole or in part for Certificated Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee shall authenticate and deliver, without service charge, (1) to each Person specified by such Depositary a new Certificated Security or Securities of the same series of like tenor and terms and of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and (2) to such Depositary a new Global Security of like tenor and terms and in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Certificated Securities delivered to Holders thereof.

(v) In any exchange provided for in any of the preceding four paragraphs, the Company will execute and the Trustee will authenticate and deliver Certificated Securities in definitive registered form in authorized denominations. Upon the exchange of a Global Security for Certificated Securities, such Global Security shall be cancelled by the Trustee. Certificated Securities issued in exchange for a Global Security pursuant to this Section 2.03 shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Certificated Securities to the Persons in whose names such Certificated Securities are so registered.

ARTICLE 3
THE SECURITIES

Section 3.01. *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);

(2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 2.03, 3.04, 3.05, 3.06, 9.04 or 11.07);

(3) the issue price for such Securities, expressed as a percentage of the aggregate principal amount;

(4) the date or dates on which the principal of the Securities of the series is payable;

(5) the rate or rates or the manner of calculating the rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on the Interest Payment Date;

(6) any provisions relating to the deferral of interest payments or extension of interest payments on the Securities of the series at the option of the Company or otherwise, including the duration of any such deferral or extension period and the maximum period during which interest payments may be deferred or extended and any provisions relating to obligations of the Company if it defers interest;

(7) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or other provisions, including whether the date of such redemption or purchase constitutes a Maturity hereunder, or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the

series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(8) the period or periods within which, the price or prices or ratios at which and the terms and conditions upon which Securities of the series may be redeemed, converted or exchanged, in whole or in part;

(9) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(10) if other than the full principal amount and/or accrued interest, the portion of the principal amount of and/or accrued interest on the Securities of the series which will be payable upon declaration of acceleration or provable in bankruptcy;

(11) any Events of Default for such Securities not set forth in this Indenture;

(12) the currency or currencies, including composite currencies, in which payment of the principal of (and premium, if any) and interest, if any, on such Securities shall be payable (if other than the currency of the United States of America), which unless otherwise specified shall be the currency of the United States of America as at the time of payment is legal tender for payment of public or private debts;

(13) if the principal of (and premium, if any) or interest, if any, on such Securities is to be payable, at the election of the Company or any Holder thereof, in a coin or currency other than that in which such Securities are stated to be payable, then the period or periods within which, and the terms and conditions upon which, such election may be made;

(14) whether interest will be payable in cash or additional Securities at the Company's or the Holders' option and the terms and conditions upon which the election may be made;

(15) if such Securities are to be denominated in a currency or currencies, including composite currencies, other than the currency of the United States of America, the equivalent price in the currency of the United States of America for purposes of determining the voting rights of Holders of such Securities as Outstanding Securities under this Indenture;

(16) if the amount of payments of principal of (and premium, if any), or portions thereof, or interest, if any, on such Securities may be determined with reference to an index, formula or other method based on a coin or currency other

than that in which such Securities are stated to be payable, the manner in which such amounts shall be determined;

(17) any restrictive covenants or other material terms relating to such Securities of such series, which covenants and terms shall not be inconsistent with the provisions of this Indenture;

(18) whether the Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for other Certificated Securities; and the Depositary for such Global Security or Securities;

(19) if other than as set forth in this Indenture, any terms with respect to subordination of such Securities, including, without limitation, the definition of "Senior Indebtedness";

(20) any listing of such Securities on any securities exchange;

(21) additional or alternative provisions, if any, related to defeasance and discharge of such Securities, the applicability of Section 4.04 to the Securities of such series, and if so applicable, the covenants contained herein and in the Securities of such series that are subject to Covenant Defeasance;

(22) the applicability of any guarantees of the Securities;

(23) if convertible into shares of Common Stock or Preferred Stock, the terms on which such Securities are convertible, including the initial conversion price, the conversion period, any events requiring an adjustment of the applicable conversion price and any requirements relating to the reservation of such shares of Common Stock or Preferred Stock for purposes of conversion;

(24) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified (including, without limiting the generality of the foregoing, any make-whole amount payable upon any such specified event);

(25) each initial Place of Payment; and

(26) any other terms of the Securities of the series.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officers' Certificate or in any such indenture supplemental hereto.

If any of the terms of the Securities of any series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the secretary or an assistant secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of any series.

Notwithstanding Section 3.01(2) herein and unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

Section 3.02. *Denominations.*

The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 3.01. In the absence of any such specified denominations with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

Section 3.03. *Execution, Authentication, Delivery and Dating.*

The Securities shall be executed on behalf of the Company by its chairman of the Board of Directors, the vice chairman of the Board of Directors, a chief executive officer, its president or one of its vice presidents. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 2.01 and 3.01, or by one or more indentures supplemental hereto as provided by Section 9.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, if it so requests, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating:

(a) that such form has been established in conformity with the provisions of this Indenture;

(b) that such terms have been established in conformity with the provisions of this Indenture;

(c) that this Indenture and such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles;

(d) that all laws and requirements in respect of the execution and delivery by the Company of the Securities have been complied with; and

(e) such other matters as the Trustee may reasonably request.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Security shall be dated the date of its authentication unless otherwise provided by the terms established and contemplated by Section 3.01.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual or facsimile signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

Section 3.04 . *Temporary Securities.* Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations. Until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.05 . *Registration, Registration of Transfer and Exchange.* The Company shall cause to be kept at one of its offices or agencies maintained pursuant to Section 10.02 or at the Corporate Trust Office of the Trustee a register (the register maintained in such office or in any other office or agency of the Company in a Place of Payment being herein sometimes referred to as the "Security Register") in which, subject to Section 2.03 and to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee initially is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided. The Company may act as Security Registrar and may change or appoint a Security Registrar without prior notice to Holders. If and so long as the Trustee is not the Security Register, the Trustee shall have the right to inspect the Security Register during normal business hours.

Subject to Section 2.03, upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor.

Subject to Section 2.03, at the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Subject to Section 2.03, all Securities issued upon any registration or transfer or exchange of Securities shall be valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Sections 2.03, 3.04, 9.04 or 11.07 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption (under Section 11.03) and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Section 3.06 . *Mutilated, Destroyed, Lost and Stolen Securities.* If there shall be delivered to the Company and the Trustee (i)(A) any mutilated Security or (B) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to hold each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for such mutilated Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Security under this Section 3.06, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section 3.06 in lieu of any destroyed, lost or stolen Security or in exchange for such mutilated Security, shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section 3.06 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.07 . *Payment of Interest; Interest Rights Preserved.* Unless otherwise provided with respect to such Security by the terms established and contemplated by Section 3.01, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a special record date (a "Special Record Date") for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at

the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this section, each Security lawfully delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.08 . *Persons Deemed Owners.* Subject to Section 2.03, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.07) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.09 . *Cancellation.* All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this section, except as expressly permitted by this Indenture. The Trustee shall destroy cancelled Securities and deliver a certificate of such destruction to the Company.

Section 3.10 . *Computation of Interest.* Except as otherwise specified as contemplated by Section 3.01 for the Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 . *CUSIP and ISIN Numbers.* The Company in issuing the Securities may use "CUSIP" and/or "ISIN" numbers (if then generally in use), and the Trustee shall use CUSIP or ISIN numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption, exchange or conversion. The Company will promptly notify, and in any event within 10 Business Days, the Trustee of any initial CUSIP and/or ISIN numbers and of any changes in the CUSIP and/or ISIN numbers.

ARTICLE 4
SATISFACTION AND DISCHARGE

Section 4.01 . *Satisfaction and Discharge of Indenture.* This Indenture shall upon Company Request cease to be of further effect with respect to any series of Securities (except as to (i) any surviving rights of registration of transfer or exchange of Securities herein expressly provided for, (ii) rights hereunder of Holders to receive payments of principal of, and premium, if any, and interest on, Securities, and other rights, duties and obligations of the Holders as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee, (iii) remaining obligations of the Company to make mandatory sinking fund payments and (iv) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to any series of Securities, when:

(1) either:

(A) all Securities of such series theretofore authenticated and delivered (other than (i) Securities of such series which have been mutilated, destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (ii) Securities of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(B) unless otherwise provided with respect to the Securities of a series, all such Securities not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable,

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust

(i) money in U.S. dollars (or if the Securities are denominated in a currency other than U.S. dollars, in the applicable currency) in an amount sufficient, or

(ii)(a) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in clause (B) of this subparagraph money in an amount, or (b) a combination of such money and such U.S. Government Obligations, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee,

to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) if all series of Securities are being discharged, the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with and no deposit made under this Section was made in violation of Section 13.02.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.06, and, if money or U.S. Government Obligations shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section 4.01, the obligations of the Trustee under Section 4.02 and the next to last paragraph of Section 10.03, shall survive.

Section 4.02 . *Application of Trust Funds; Indemnification.* (a) Subject to the provisions of the second to last paragraph of Section 10.03, all money or U.S. Government Obligations deposited with the Trustee pursuant to Sections 4.01, 4.03 or 4.04 and all money received by the Trustee in respect of U.S. Government Obligations deposited with the Trustee pursuant to Sections 4.01, 4.03 or 4.04 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with or received by the Trustee or to make mandatory sinking fund payments or analogous payments as contemplated by Sections 4.01, 4.03 or 4.04, but such money need not be segregated from other funds except to the extent required by law.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations deposited pursuant to Sections 4.01, 4.03 or 4.04, or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations or money held by it as provided in Sections 4.01, 4.03 or 4.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the same opinions given to the Trustee pursuant to said Sections), is then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such obligations or money was deposited or received.

Section 4.03 . *Legal Defeasance and Discharge of Indenture.* The Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Securities of a series on the first date that all of the conditions set forth in the proviso in clause (c) below are satisfied, and the provisions of this Indenture, as it relates to such Outstanding Securities, shall no longer be in effect (and the Trustee, at the expense of the Company, shall upon Company Request, execute proper instruments acknowledging the same), except as to:

(a) the rights of Holders of the Securities of such series to receive, from the trust funds described in subparagraph (c)(1) hereof, (i) payment of the principal of (and premium, if any) and each installment of principal of (and premium, if any) or interest on the Securities of such series on the Stated Maturity of such principal or installment of principal or interest or, in the case of a redemption, payment of the principal of (and premium, if any) and interest on the Securities of such series due on or prior to the Redemption Date and (ii) the benefit of any mandatory sinking fund payments applicable to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of this Indenture and such Securities;

(b) the Company's obligations with respect to such Securities under Sections 3.05, 3.06, 10.02 and 10.03; and

(c) the obligations of the Company to the Trustee under Section 6.06 and the rights, obligations and immunities of the Trustee hereunder, *provided* , however, that the following conditions shall have been satisfied:

(1) the Company has or caused to be irrevocably deposited (except as provided in Section 4.02) with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities,

(i) money in U.S. Dollars (or if the Securities of such series are denominated in a currency other than U.S. dollars, in the applicable currency) in an amount sufficient, or

(ii) (x) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in Section 4.03(a) money in an amount, or (y) a combination of such money and such U.S. Government Obligations, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge (A) the principal of (and premium, if any) and each installment of principal of (and premium, if any) and interest on the Outstanding Securities of such series on the Stated Maturity of such principal or installment of principal or interest or the principal of (and premium, if and) and interest on the Securities of such series due on or prior to the applicable Redemption Date and (B) any mandatory sinking fund payments applicable to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities;

(2) such deposit shall not cause the Trustee with respect to the Securities of such series to have a conflicting interest for purposes of the Trust Indenture Act with respect to such Securities;

(3) such deposit will not result in a breach or violation of, or constitute a default under, any applicable laws, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound and such deposit was not made in violation of Section 13.02;

(4) no Event of Default or Enforcement Event or event which with notice or lapse of time would become an Event of Default or Enforcement Event with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit;

(5) if the deposit referred to in subparagraph (1) of this Section 4.03 is to be made on or prior to one year from the Stated Maturity for payment of principal of the Outstanding Securities of such series, the Company has delivered to the Trustee an Opinion of Counsel with no material qualifications or a favorable ruling of the Internal Revenue Service, in either case to the effect that Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, defeasance and discharge had not occurred;

(6) if the Securities of such series are to be redeemed prior to Stated Maturity (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made; and

(7) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the legal defeasance provided for in this Section have been complied with.

Section 4.04 . *Defeasance of Certain Obligations*. If this Section 4.04 is specified in accordance with Section 3.01 to be applicable to Securities of any series, the Company may omit to comply with any covenant designated in accordance with Section 3.01 as being subject to this Section 4.04 with respect to the Securities of that series ("Covenant Defeasance") if:

(1) the Company has deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of that series,

(i) money in U.S. dollars (or if the Securities are denominated in a currency other than U.S. dollars, in the applicable currency) in an amount sufficient, or

(ii) (a) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in this clause (ii) money in an amount, or (b) a combination of such money and such U.S. Government Obligation, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge (A) the principal of (and premium, if any) and each installment of principal (and premium, if any) and interest on the Outstanding Securities of that series on the Stated Maturity of such principal or installment of principal or interest or the principal of (and premium, if any) and interest on the Securities of that series due on or prior to the applicable Redemption Date and (B) any mandatory sinking fund payments or analogous payments applicable to Securities of such series on the day on which such payments are due and payable in accordance with the terms of the Indenture and of such Securities;

(2) such deposit shall not cause the Trustee with respect to the Securities of that series to have a conflicting interest for purposes of the Trust Indenture Act with respect to the Securities of any series;

(3) such deposit will not result in a breach or violation of, or constitute a default under, any applicable laws, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound and such deposit was not made in violation of Section 13.02;

(4) if the deposit referred to in subparagraph (1) of this Section 4.04 is to be made on or prior to one year from the Stated Maturity for payment of principal of the Outstanding Securities, the Company has delivered to the Trustee an Opinion of Counsel with no material qualifications or a favorable ruling of the Internal Revenue Service, in either case to the effect that Holders of the Securities of that series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance of certain obligations and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and defeasance had not occurred;

(5) if the Securities of that series are to be redeemed prior to the Stated Maturity (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made; and

(6) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the Covenant Defeasance contemplated by this Section 4.04 have been complied with.

For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in the Sections subject to such Covenant Defeasance, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

ARTICLE 5
R EMEDIES

Section 5.01 . *Events of Default.* "Event of Default" whenever used herein with respect to Securities of any series means any one of the following events and such other events as may be established with respect to the Securities of such series as contemplated by Section 3.01 hereof, unless it is either inapplicable or is specifically deleted or modified in the applicable Board Resolution or in the supplemental indenture under which the Securities of such series are issued, as the case may be, as contemplated by Section 3.01 hereof :

(1) failure to pay in full the interest accrued on any Securities of such series when such interest becomes due and payable and continuance of that failure for a period of 30 days or, if interest deferral is applicable to such series pursuant to Section 3.01, failure to pay in full the interest accrued on any Securities of such series when such interest becomes due and payable upon the conclusion of an interest deferral period having the maximum permitted length specified pursuant to Section 3.01 and continuance of that failure for a period of 30 days thereafter; or

(2) failure to pay the principal of (or premium, if any, on) any Securities of such series as and when the same shall become due and payable at Maturity; or

(3) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(4) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or make any general assignment for the benefit of creditors; or

(5) any other Event of Default provided for with respect to such series of Securities in accordance with Section 3.01.

Section 5.02 . *Acceleration of Maturity: Rescission and Annulment.* If an Event of Default (other than an Event of Default under Section 5.01(3) or (4)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable.

In case of an Event of Default under Section 5.01(3) or (4) which occurs and is continuing with respect to Securities of any series at the time Outstanding, then all unpaid principal of and accrued interest on all such Outstanding Securities of that series shall become immediately due and payable without any notice or other action on the part of the Trustee or the Holders of any Securities of such series.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Securities of that series,

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee and any predecessor Trustee hereunder and all sums due the Trustee and any predecessor Trustee under Section 6.06; and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series that have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.03. *Collection Of Indebtedness And Suits For Enforcement By Trustee.*

The term "Enforcement Event" whenever used herein with respect to Securities of any series means any one of the following events and such other events as may be established with respect to the Securities of such series as contemplated by Section 3.01 hereof, unless it is either inapplicable or is specifically deleted or modified in the applicable Board Resolution or in the supplemental indenture under which the Securities of such series are issued, as the case may be, as contemplated by Section 3.01 hereof:

(1) default is made in the payment of the interest accrued on any Securities of such series when such interest becomes due and payable and continuance of that failure for a period of 30 days or, if interest deferral is applicable to such series pursuant to Section 3.01, default is made in the payment of the interest accrued on any Securities of such series when such interest becomes due and payable upon the conclusion of an interest deferral period having the maximum permitted length specified pursuant to Section 3.01 and continuance of that failure for a period of 30 days thereafter; or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of such series as and when the same shall become due and payable at Maturity; or

(3) default in the making or satisfaction of any sinking fund payment or analogous obligation as and when the same shall become due and payable by the terms of the Securities of such series; or

(4) default in the observance, satisfaction or performance of any of the covenants or agreements contained in this Indenture (other than a covenant or agreement in respect of the Securities of such series a default in whose observance, satisfaction or performance is elsewhere in this Section specifically dealt with) on the part of the Company in respect of the Securities of such series continued for a period of 60 days after the date on which written notice of such failure, requiring the Company to remedy the same and stating that it is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee by registered mail, or to the Company and the Trustee by the Holders of at least twenty-five percent in the aggregate principal amount of the Securities of such series at the time Outstanding; or

(5) any other Enforcement Event provided in or pursuant to the applicable Board Resolution or in the supplemental indenture under which such series of Securities is issued, as the case may be, as contemplated by Section 3.01.

The Company covenants that if an Enforcement Event of the kind specified in clauses (1) through (3) above occurs, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including all amounts due the Trustee and any predecessor Trustee under Section 6.06.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If any Event of Default or Enforcement Event with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Notwithstanding anything herein to the contrary, the Trustee shall have no responsibility, including any right or obligation to exercise remedies, with respect to a default by the Company with respect to any covenant contained herein, other than a covenant the violation of which constitutes, or with the giving of notice or the passage of time or both, would constitute, an Event of Default or an Enforcement Event; provided, that nothing in this paragraph shall impair the right of the Trustee to enforce the Company's obligations hereunder with respect to the Trustee's compensation, reimbursement of expenses and advances and indemnities.

Section 5.04. *Trustee May File Proofs of Claim.*

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

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

(ii) 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 Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.06.

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

Section 5.05 . *Trustee May Enforce Claims Without Possession of Securities.* All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 5.06 . *Application of Money Collected.* Any money collected by the Trustee pursuant to this article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and each predecessor Trustee under Section 6.06;

SECOND: Subject to Article 13, to the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Securities in respect of which or for the benefit of which such money has been collected ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

THIRD: To the Company.

Section 5.07. *Limitation on Suits.*

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default or Enforcement Event with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default or Enforcement Event in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 5.08 . *Unconditional Right of Holders to Receive Principal, Premium and Interest.* Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.07 and to any limitation as to interest as may be specified pursuant to Section 3.01) interest on such Security on the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.09 . *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 5.10 . *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 . *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default or Enforcement Event shall impair any such right or remedy or constitute a waiver of any such Event of Default or Enforcement Event or any acquiescence therein. Every right and remedy given by this article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 . *Control by Holders.* The Holders of a majority in principal amount of the Outstanding Securities of any series (or if more than one series is affected thereby, of all series so affected, voting as a single class) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided, however, that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, expose the Trustee to personal liability or be unduly prejudicial to Holders not joining therein, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Nothing in this Indenture shall impair the right of the Trustee to take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13 *Waiver of Past Defaults.* The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series affected thereby (voting as a single class) waive any past default hereunder with respect to such series and its consequences, except that the consent of the Holders of all of the Securities of such series affected thereby is required to waive a default:

(1) in the payment of the principal of (or premium, if any) or interest on any Security of such series; or

(2) in respect of a covenant or provision hereof which under this article cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default or Enforcement Event arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.14 . *Undertaking for Costs.* All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Securities on or after the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date). This Section 5.14 shall be in lieu of Section 3.15(e) of the Trust Indenture Act and such Section 3.15(e) is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

Section 5.15 . *Waiver of Stay or Extension Laws.* The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.16 . *Notice of Defaults.* Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however,* that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities of such series; and provided, further, however, that in the case of any default of the character specified in Section 5.03(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section 5.16, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default or Enforcement Event with respect to Securities of such series.

ARTICLE 6
THE TRUSTEE

Section 6.01. *Duties and Responsibilities of Trustee.* With respect to the Holders of the Securities of any series issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of such series and after the curing or waiving of all Events of Default which may have occurred with respect to such series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the Securities of a series has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to such series, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(1) prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing or waiving of all Events of Default with respect to such series which may have occurred: (a) the duties and obligations of the Trustee with respect to the Securities of such series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set

forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and (b) in the absence of bad faith on the part of the Trustee, the 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 Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

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

(3) the Trustee shall not be liable with respect to any action taken, omitted or suffered to be taken by it in good faith in accordance with the direction of the holders of Securities of any series pursuant to Section 5.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to Securities of such series; and

(4) none of the provisions of this Indenture shall be construed as requiring the Trustee to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The provisions of this Section 6.01 are in furtherance of and subject to Section 315 of the Trust Indenture Act.

Section 6.02 . *Reliance on Documents, Opinions, etc.* In furtherance of and subject to the Trust Indenture Act, and subject to the provisions of Section 6.01:

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any Board Resolution, Officers' Certificate, statement, instrument, Opinion of Counsel, opinion, report, notice, request, direction, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Company by the chairman of the Board of Directors, a vice chairman of the Board of Directors, a chief executive officer, its president or one of its vice

presidents or its secretary or its comptroller (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary, an Assistant Secretary or an attesting secretary of the Company (unless other evidence in respect thereof be herein specifically prescribed);

(3) the Trustee may consult with counsel and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, omitted or suffered to be taken by it hereunder in good faith and in accordance with such Opinion of Counsel;

(4) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(5) the Trustee shall not be liable for any action taken, omitted or suffered by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(6) the Trustee shall not be bound to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document unless requested in writing so to do by the Holders of a majority in aggregate principal amount of the Outstanding Securities of any series affected thereby; provided, however, that if the payment within a reasonable time to the Trustee of the costs and expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security conferred upon it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding; and the reasonable expense of such investigation shall be paid by the Company, or, if paid by the Trustee, shall be repaid by the Company upon demand; and

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

Section 6.03 . *No Responsibility for Recitals, etc.* The recitals contained herein and in the Securities shall be taken as the statements of the Company (except in the Trustee's certificates of authentication), and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Securities,

provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds thereof.

Section 6.04 . *Ownership of Securities.* The Trustee and any agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee or such agent.

Section 6.05 . *Moneys to be Held in Trust.* Subject to the provisions of Section 10.03 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon. So long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the written order of the Company, signed by the chairman of the Board of Directors, a vice chairman of the Board of Directors, a chief executive officer, its president, one of its vice presidents, its treasurer or its comptroller.

Section 6.06 . *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of this trust and its duties hereunder, including the costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 6.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for

expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities.

Section 6.07 . *Officers' Certificate as Evidence.* Subject to the provisions of Sections 6.01 and 6.02, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, omitted or suffered by it under the provisions of this Indenture upon the faith thereof.

Section 6.08 . *Indentures Not Creating Potential Conflicting Interests for the Trustee.* The following indentures are hereby specifically described for the purposes of Section 310(b)(1) of the Trust Indenture Act: this Indenture with respect to the Securities of any other series.

Section 6.09 . *Eligibility of Trustee.* The Trustee hereunder shall at all times be a corporation organized and doing business under the laws of the United States or any state, which (a) is authorized under such laws to exercise corporate trust powers and (b) is subject to supervision or examination by Federal or State authority and (c) shall have at all times a combined capital and surplus of not less than $50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.09, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.10. The provisions of this Section 6.09 are in furtherance of and subject to Section 310(a) of the Trust Indenture Act.

Section 6.10 . *Resignation or Removal of Trustee.* The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to any one or more or all series of Securities by giving written notice of resignation to the Company and by mailing notice thereof to the Holders of the applicable series of Securities at their addresses as they shall appear in the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a

successor trustee or trustees with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed with respect to any series and have accepted appointment within 60 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 6.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

In case at any time any of the following shall occur —

(1) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act with respect to any series of Securities after written request therefor by the Company or by any Holder who has been a bona fide holder of a Security or Securities of such series for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.09 and Section 310(a) of the Trust Indenture Act with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation —

then, in any such case, (x) the Company may remove the Trustee with respect to such series and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, (y) subject to the provisions of Section 315(e) of the Trust Indenture Act, any Holder who has been a bona fide holder of a Security or Securities of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee with respect to such series.

Any resignation or removal of the Trustee with respect to any series and any appointment of a successor trustee with respect to such series pursuant to any of the provisions of this Section 6.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 6.11.

No predecessor Trustee shall be liable for the acts or omissions of any successor Trustee.

Section 6.11 . *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 6.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to any or all applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment (or due provision therefor) of any amounts then due it pursuant to the provisions of Section 6.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers with respect to such series of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 6.06.

In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor trustee with respect to the Securities of any series as to which the predecessor trustee is not retiring shall continue to be vested in the predecessor trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such trustee.

No successor trustee with respect to a series of Securities shall accept appointment as provided in this Section 6.11 unless at the time of such acceptance such successor trustee shall, with respect to such series, be qualified under Section 310(b) of the Trust Indenture Act and eligible under the provisions of Section 6.09.

Upon acceptance of appointment by a successor trustee with respect to any series as provided in this Section 6.11, the Company shall mail notice of the succession of such trustee hereunder to the holders of Securities of such series at their addresses as they shall appear in the Security Register. If the Company fails to mail such notice within ten days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 6.12 . *Succession by Merger, etc.* Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor to the Trustee hereunder, provided such Person shall be qualified under Section 310(b) of the Trust Indenture Act and eligible under the provisions of Section 6.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trust created by this Indenture with respect to one or more series of Securities, any of such Securities shall have been authenticated but not delivered, any such successor to the Trustee by merger, conversion or consolidation may adopt the certificate of authentication of any predecessor trustee, and deliver such Security so authenticated; and in case at that time any of such Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of such successor to the Trustee or, if such successor to the Trustee is a successor by merger, conversion or consolidation the name of any predecessor hereunder; and in all such cases such certificate shall have the full force which it is anywhere in such Securities or in this Indenture provided that the certificate of the Trustee shall have.

Section 6.13 . *Appointment of Authenticating Agent.* The Trustee may appoint an Authenticating Agent or Agents which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer, partial conversion or partial redemption or pursuant to Section 3.06, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee’s certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent

and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section. Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

If an appointment is made pursuant to this Section, the Securities may have endorsed thereon, in addition to the Trustee’s certificate of authentication, an alternative certificate of authentication in the following form:

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

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

By:
As Authenticating Agent

By:
Authorized Signatory"

ARTICLE 7
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01 . *Company to Furnish Trustee Names and Addresses of Holders*. The Company will furnish or cause to be furnished to the Trustee with respect to the Securities of each series:

(a) semi-annually, not more than fifteen days after each Regular Record Date, or, in the case of any series of Securities on which semi-annual interest is not payable, not more than fifteen days after such semi-annual dates as may be specified by the Trustee, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date or such semi-annual date, as the case may be; and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however , that so long as the Trustee is the Security Registrar, no such list need be furnished.

Section 7.02 . *Preservation of Information; Communications to Holders. (a)* The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) If three or more Holders (herein referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 7.02(a), or

(ii) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 7.02(a) and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 7.02(a) a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interest of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 7.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 7.02(b).

(d) Subject to Sections 6.01 and 7.02(a), (b) and (c), if the Company or any other Person (other than the Trustee) shall desire to communicate with Holders of Securities to solicit or obtain from them any proxy, consent, authorization, waiver, approval of a plan of reorganization, arrangement or readjustment or other action ("Holder Action"), the Trustee shall have no duty to participate in such communication or solicitation or the processing of responses in any manner except (i) to furnish the rules and regulations and to perform the functions referred to in Section 1.04 and (ii) to receive (A) the instruments evidencing the Holder Action together with (B) the Officers' Certificate and Opinion of Counsel referred to below. The Company hereby covenants that any and all communications and solicitations distributed by it in connection with any Holder Action will comply in all material respects with applicable law, including without limitation applicable law concerning adequacy of disclosure. The Trustee shall have no responsibility for the accuracy or completeness of any materials circulated to solicit any Holder Action nor for any related communications nor for the compliance thereof with applicable law. No Holder Action shall become effective until the Trustee shall have received from the Company or other person who solicited the Holder Action (1) the instruments evidencing such Holder Action and (2) (x) (in the case of Holder Action solicited by the Company or the representative of the Company's estate if the Company is the debtor in any bankruptcy or other insolvency proceeding) an Officers' Certificate and (y) (in all cases) an Opinion of Counsel, each specifying the Holder Action taken and stating that such Holder Action has been duly and validly taken in compliance with this Indenture in all material respects. Such Officers' Certificate, if any, shall also certify that (after giving effect to such Holder Action) no Event of Default or Enforcement Event or event or condition which, with notice or lapse of time or both, would become an Event of Default or Enforcement Event has occurred and is continuing or has not been waived.

(e) The Depositary may grant proxies and otherwise authorize its participants which own the Global Securities to give or take any Act which a Holder is entitled to take under this Indenture; *provided, however* , that the Depositary has delivered a list of such participants to the Trustee.

Section 7.03 . *Reports by Trustee.* (a) Within 60 days after June 1 of each year commencing with the first June 1 following the date of this Indenture, the Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, a brief report dated as of such June 1, to the extent required by Section 3.13(a) of the Trust Indenture Act.

(b) The Trustee shall comply with Sections 3.13(b) and 3.13(c) of the Trust Indenture Act.

(c) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with the Commission and with the Company. The Company will notify the Trustee promptly, and in any event within 10 Business Days, when any Securities are listed on any stock exchange or any de-listing thereof.

Section 7.04 . *Reports By Company.* The Company shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15 (d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations; and

(2) file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations.

Delivery of such reports, information and documents to the Trustee is for information purposes only and the Trustee’s receipt of such shall not constitute notice or constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on an Officers’ Certificate).

ARTICLE 8
SUCCESSOR CORPORATION

Section 8.01. *Company May Not Consolidate, etc., Except Under Certain Conditions.* The Company covenants that it will not merge or consolidate with any other Person or sell, convey, transfer or otherwise dispose of all or substantially all of its assets to any other Person, unless (i) either the Company shall be the continuing corporation, or the successor Person (if other than the Company) shall be a corporation or a limited liability company organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation or limited liability company, as the case may be, shall expressly assume the due and punctual payment of the principal of, and premium, if any, and interest, if any, on all the Securities according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such corporation or limited liability company, as the case may be, and (ii) the Company or such successor corporation or limited liability company, as the case may be, shall not, immediately after such merger or consolidation, or such sale, conveyance, transfer or other disposition, be in default in the performance of any such covenant or condition. In the event of any such merger, consolidation, sale, conveyance (other than by way of lease), transfer or other disposition, the predecessor company may be dissolved, wound up and liquidated at any time thereafter.

Section 8.02 . *Successor Corporation or Limited Liability Company to be Substituted.* In case of any such merger, consolidation, sale, conveyance (other than by way of lease), transfer or other disposition, and upon any such assumption by the successor corporation or limited liability company, such successor corporation or limited liability company shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the Company, and the Company shall be relieved of any further obligation under this Indenture and under the Securities. Such successor corporation or limited liability company thereupon may cause to be signed, and may issue either in its own name or in the name of Genworth Financial, Inc., any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation or limited liability company, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation or limited liability company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such merger, consolidation, sale, conveyance, transfer or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

Section 8.03 . *Documents to be Given Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article 8.

ARTICLE 9
AMENDMENTS AND SUPPLEMENTAL INDENTURES

Section 9.01 . *Supplemental Indentures without Consent of Holders.* The Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(1) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Article 8 hereof;

(2) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included for the benefit of such series) as the Board of Directors and the Trustee shall consider to be for the protection of the holders of such Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default or Enforcement Event permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however,* that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(3) to provide for the issuance under this Indenture of Securities in coupon form (including Securities registrable as to principal only) and to provide for exchangeability of such Securities with the Securities of the same series issued hereunder in fully registered form and to make all appropriate changes for such purpose;

(4) to establish the forms or terms of Securities of any series or of the Coupons appertaining to such Securities as permitted by Sections 2.01 and 3.01;

(5) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture, provided that no action under this clause (5) shall adversely affect the interests of the Holders of any Securities; *provided, however*, that any amendment made solely to conform the provisions of this Indenture to the description of the Securities of a series contained in the prospectus or other offering document pursuant to which such Securities were sold will not be deemed to adversely affect the interests of the Holders of such Securities;

(6) to modify or amend this Indenture to permit the qualification of this Indenture or any indentures supplemental hereto under the Trust Indenture Act;

(7) to add guarantees with respect to the Securities of any series or to secure the Securities of any series; and

(8) to evidence and provide for the acceptance of appointment hereunder by a successor or separate trustee with respect to the Securities of one or more series or to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Section 6.11.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 9.02.

Section 9.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Section 1.04) of the Holders of a majority in the aggregate principal amount of the Securities of each series (each series voting as a class) affected by such supplemental indenture at the time Outstanding, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Securities or each such series; provided, however, that no such supplemental indenture shall:

(1) change the Stated Maturity of principal of, or any installment of principal of or interest on, any Security;

(2) reduce the rate of or extend the time of payment of interest, if any, on any Security, or alter the manner of calculation of interest payable on any Security (except as part of any remarketing of the Securities of any series, or any interest rate reset with respect thereto, in each case in accordance with the terms thereof);

(3) reduce the principal amount or premium, if any, on any Security;

(4) make the principal amount or premium, if any, or interest, if any, on any Security, payable in any coin or currency other than that provided in any Security;

(5) reduce the percentage in principal amount of Securities of any series, the holders of which are required to consent to any such supplemental indenture or any waiver of any past default or Event of Default or Enforcement Event pursuant to Section 5.13;

(6) change any place of payment where the Securities of any series or interest thereon is payable;

(7) impair the right of any holder of a Security to institute suit for any such payment, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity thereof pursuant to Section 5.02 or adversely affect the right of repayment, if any, at the option of the Holder, or extend the time, or reduce the amount of any payment to any sinking fund or analogous obligation relating to any Security; or

(8) modify any provision of Section 5.13, 9.02 or 10.07 (except to increase any such percentage or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each Security so affected),

without, in the case of each of the foregoing clauses (1) through (8), the consent of the Holder of each Security so affected. A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution and delivery of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof .

Section 9.03. *Compliance with Trust Indenture Act; Effect of Supplemental Indentures.* Any supplemental indenture executed pursuant to the provisions of this Article 9 shall comply with the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of the Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. *Notation on Securities.* Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such series then Outstanding.

Section 9.05. *Evidence of Compliance of Supplemental Indenture to be Furnished Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9.

ARTICLE 10
C OVENANTS

Section 10.01. *Payment of Principal, Premium and Interest.* The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture. At the option of the Company, payment of principal (and premium, if any) and interest on the Securities may be made either by wire transfer or (subject to collection) by check mailed to the address of the Person entitled thereto at such address as shall appear in the Security Register; *provided* that, in connection with payment by wire transfer, the Paying Agent shall have received appropriate wire transfer instructions at least five Business Days prior to the applicable payment date.

Section 10.02 . *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company hereby initially appoints the Trustee its office or agency for each of said purposes. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03 . *Money for Securities; Payments to Be Held in Trust.* If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee a written instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal (and premium, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look, only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the City, County and State of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

The Company shall have no obligation to make payment of principal of (or premium, if any) or interest on any Security in immediately available funds, except that if the Company shall have received original payment for Securities in immediately available funds it shall make available immediately available funds for payment of the principal of such Securities.

Section 10.04 . *Corporate Existence.* Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; *provided, however* , that the Company shall not be required to preserve any such right or franchise if the Board of Directors or senior management of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 10.05 . *Maintenance of Properties.* The Company will use its reasonable efforts to cause all material properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order (subject to wear and tear) and supplied with all necessary material equipment and will use its reasonable efforts to cause to be made all necessary material repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section 10.05 shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business and not disadvantageous in any material respect to the Holders.

Section 10.06 . *Statement by Officers as to Default.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, a certificate of the principal executive officer, principal financial officer or principal accounting officer of the Company stating whether or not to the best knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.07 . *Waiver of Certain Covenants.* In respect of any series of Securities, the Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 3.01(17), 9.01(2) or 9.01(4) for the benefit of the Holders of the Securities of such series if before or after the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE 11
REDEMPTION OF SECURITIES

Section 11.01 . *Applicability of Article.* Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article 11. In addition, unless expressly prohibited in an indenture supplement hereto or in authorizing resolutions with respect to any series of Securities, the Company may purchase, acquire or otherwise hold Securities.

Section 11.02 . *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In case of any redemption in whole or in part at the election of the Company of the Securities of any series, the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed, such notice to be accompanied by an Officers' Certificate stating that no defaults in the payment of interest or Events of Default with respect to the Securities of that series have occurred (which have not been waived or cured). In the case of any redemption of Securities (x) prior to the expiration of any restriction on such

redemption provided in the terms of such Securities or elsewhere in this Indenture or (y) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee an Officers' Certificate evidencing compliance with such restriction or condition.

Section 11.03 . *Selection by Trustee of Securities to be Redeemed.* If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee in its sole discretion shall deem fair and appropriate and which may provide for the selection or redemption of portions (equal to authorized denominations for Securities of that series) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 11.04 . *Notice of Redemption.* Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice. Failure to give notice by mail, or any defect in the notice to any such Holder in respect of any Security, shall not affect the validity of the proceedings for the redemption of any other Security.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price and any accrued interest, or if the Redemption Price is not then ascertainable, the manner of calculation thereof;

(3) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Securities to be redeemed;

(4) that on the Redemption Date the Redemption Price and any accrued interest will become due and payable upon each such Security to be redeemed together with accrued interest thereon and, if applicable, that interest thereon will cease to accrue on and after said date;

(5) the place or places where such Securities are to be surrendered for payment of the Redemption Price and any accrued interest;

(6) that the redemption is for a sinking fund, if such is the case; and

(7) the CUSIP number and, if applicable, the ISIN number, of the Securities being redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, upon Company Request, by the Trustee to each Holder of the Securities to be redeemed in the name and at the expense of the Company, provided that the Company makes such request in writing at least 15 Business Days prior to the date by which such notice of redemption must be given to Holders in accordance with this Section 11.04.

Section 11.05 . *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money, in funds immediately available on the due date, sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date. Promptly after the calculation of the Redemption Price, the Company will give the Trustee and any Paying Agent written notice thereof.

Section 11.06 . *Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified together with accrued interest thereon, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; *provided, however,* that (unless otherwise provided with respect to such Securities in accordance with Section 3.01) installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.07.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

The Trustee shall not redeem any Securities of any series pursuant to this Article (unless all Outstanding Securities of such series are to be redeemed) or mail or give any notice of redemption of Securities during the continuance of an Event of Default hereunder known to the Trustee with respect to such series, except that, where the mailing of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, *provided, however* , that it shall have received from the Company a sum sufficient for such redemption. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be deemed to have been collected under Article 5 and held for the payment of all such Securities of such series. In case such Event of Default shall have been waived as provided in Section 5.13 or the default cured on or before the 60th day preceding the Redemption Date, such moneys shall thereafter be applied in accordance with the provisions of this Article.

Section 11.07 . *Securities Redeemed in Part.* Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE 12
S INKING F UNDS

Section 12.01 . *Applicability of Article.* The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.02. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 12.02 . *Satisfaction of Sinking Fund Payments with Securities.* The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided, however, that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.03 . *Redemption of Securities for Sinking Fund.* Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company (1) will deliver to the Trustee an Officers' Certificate (A) stating that no defaults in the payment of interest or Events of Default with respect to Securities of that series have occurred (which have not been waived or cured), (B) specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of Securities of that series, (C) stating whether or not the Company intends to exercise its right, if any, to make an optional sinking fund payment with respect to such series on the next ensuing sinking fund payment date and, if so, specifying the amount of such optional sinking fund payment and (D) specifying the portion of such sinking fund payment, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.02 and the basis for any such credit and (2) will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities of such series to be redeemed upon such sinking fund payment date in the manner specified in Section 11.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.05, 11.06 and 11.07. Failure of the Company, on or before any such 60th day, to deliver such Officers' Certificate and Securities specified in this Section, if any, shall not constitute a default but shall constitute, on and as of such date, the irrevocable election of the Company (a) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (b) that the Company will make no optional sinking fund payment with respect to Securities of such series as provided in this article.

The Trustee shall not redeem or cause to be redeemed any Security of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund during the continuance of a default in payment of interest on such Securities or of any Event of Default with respect to such series except that, where the mailing of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, provided that it shall have received from the Company a sum sufficient for such redemption. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such default or Event of Default shall occur, and any moneys thereafter paid into the sinking fund, shall, during the continuance of such default or Event of Default, be deemed to have been collected under Article 5 and held for the payment of all such Securities of such series. In case such Event of Default shall have been waived as provided in Section 5.13 or the default cured on or before the 60th day preceding the sinking fund payment date, such moneys shall thereafter be applied on the next succeeding sinking fund payment date in accordance with this Section to the redemption of such Securities.

ARTICLE 13
S UBORDINATION

Section 13.01 . *Agreement to Subordinate. (a)* The Company covenants and agrees, and each Holder of Securities issued hereunder by such Holder's acceptance thereof likewise covenants and agrees, that (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) all Securities shall be issued subject to the provisions of this Article 13; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

(b) The payment by the Company of the principal of (and premium, if any), and interest on, the Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of this Indenture or thereafter incurred.

(c) No provision of this article shall prevent the occurrence of any default or Event of Default or Enforcement Event hereunder.

Section 13.02 . *Default on Senior Indebtedness.* (a) No direct or indirect payment by or on behalf of the Company of principal of, premium, if any, or interest on the Securities (other than on Permitted Junior Securities), whether

pursuant to the terms of the Securities or upon acceleration, by way of repurchase, redemption, defeasance or otherwise, will be made if, at the time of such payment, there exists a default in the payment when due of all or any portion of the obligations under or in respect of any Senior Indebtedness, whether at maturity, on account of mandatory redemption or prepayment, acceleration or otherwise, and such default shall not have been cured or waived or the benefits of this Section 13.02(a) waived by or on of the holders of Senior Indebtedness.

(b) In addition, during the continuance of any non-payment default or non-payment event of default with respect to any Designated Senior Indebtedness pursuant to which the maturity thereof may be accelerated, and upon receipt by the Trustee of written notice (a "Payment Blockage Notice") from a holder or holders of such Designated Senior Indebtedness or the trustee or agent acting on behalf of such Designated Senior Indebtedness, then, unless and until such default or event of default has been cured or waived or has ceased to exist or such Designated Senior Indebtedness has been discharged or repaid in full in cash, or the requisite holders of such Designated Senior Indebtedness have otherwise agreed in writing, (a) no payment of any kind or character with respect to any principal of or interest on or distribution will be made by or on behalf of the Company on account of or with respect to the Securities (other than in Permitted Junior Securities) and (b) the Company may not acquire any Securities for cash, property or otherwise, during a period (a "Payment Blockage Period") commencing on the date of receipt of such Payment Blockage Notice by the Trustee and ending 179 days thereafter.

Notwithstanding anything herein to the contrary, (x) in no event will a Payment Blockage Period extend beyond 179 days from the date the Payment Blockage Notice in respect thereof was given. Not more than one Payment Blockage Period may be commenced with respect to the Securities during any period of 360 consecutive days. No default or event of default that existed or was continuing on the date of commencement of any Payment Blockage Period with respect to the Designated Senior Indebtedness initiating such Payment Blockage Period may be, or be made, the basis for the commencement of any other Payment Blockage Period by the holder or holders of such Designated Senior Indebtedness or the trustee or agent acting on behalf of such Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or event of default has been cured or waived for a period of not less than 90 consecutive days.

(c) In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 13.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have

been issued, as their respective interests may appear, as calculated by the Company, to the extent necessary to pay such Senior Indebtedness in full, in cash, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders or to the Trustee.

Section 13.03 . *Liquidation; Dissolution; Bankruptcy*. (a) Upon any distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any total or partial dissolution, winding-up, liquidation or reorganization of the Company, whether voluntary or involuntary, assignment for the benefit of creditors or marshalling of the Company's assets, or in bankruptcy, insolvency, receivership or other similar proceedings, whether voluntary or involuntary, all principal, premium, if any, and interest due or to become due to all Senior Indebtedness of the Company shall first be paid in full in cash, or such payment duly provided for to the satisfaction of the holders of the Senior Indebtedness, before the Holders are entitled to receive or retain any payment; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character whether in cash, property or securities, which the Holders or the Trustee would be entitled to receive from the Company, except for the provisions of this Article, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness of the Company or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, to the extent necessary to pay such Senior Indebtedness in full in cash, or to cause such payment to be duly provided for to the satisfaction of the holders of the Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders or to the Trustee.

(b) In the event that, notwithstanding Section 13.03(a), any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by Section 13.03(a), shall be received by the Trustee before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, to the extent necessary to pay such Senior Indebtedness in full, in cash, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders or to the Trustee.

(c) For purposes of this Article 13, the words “cash, property or securities” shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article with respect to the Securities to the payment of all Senior Indebtedness of the Company that may at the time be outstanding; *provided, however* , that (i) such Senior Indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of all or substantially all of the assets of the Company, to another corporation or limited liability company upon the terms and conditions provided for in Article 8 of this Indenture shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 13.03 if such other corporation or limited liability company shall, as part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 8 of this Indenture. Nothing in Section 13.02 or in this Section 13.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.06 of this Indenture.

(d) If the Trustee or any Holder of Securities does not file a proper claim or proof of debt in the form required in any proceeding referred to above prior to 30 days before the expiration of the time to file such claim in such proceeding, then the holder of any Senior Indebtedness is hereby authorized, and has the right, to file an appropriate claim or claims for or on behalf of such Holder of Securities.

Section 13.04 . *Subrogation.* (a) Subject to the payment in full of all Senior Indebtedness of the Company then outstanding, the rights of the Holders shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until the principal of and premium, if any, and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Holders or the Trustee would be entitled except for the provisions of this Article 13, and no payment over pursuant to the provisions of this Article 13 to or for the benefit of the holders of such Senior Indebtedness by Holders or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness, and

the Holders, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article 13 are and are intended solely for the purposes of defining the relative rights of the Holders, on the one hand, and the holders of such Senior Indebtedness, on the other hand.

(b) Nothing contained in this Article 13 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of (premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders and creditors of the Company other than the holders of Senior Indebtedness nor shall anything herein or therein prevent the Trustee or any Holder of Securities from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

(c) Upon any payment or distribution of assets of the Company referred to in this Article 13, the Trustee, subject to the provisions of Section 6.01 of this Indenture, and the Holders shall be entitled to rely conclusively upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or the Holders, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this article.

Section 13.05 . *Trustee to Effectuate Subordination.* Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 13 and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Section 13.06 . *Notice by the Company.* (a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 13. Notwithstanding the provisions of this Article 13 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 13,

unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a Holder or holders of Senior Indebtedness or from any representative or trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.01 of this Indenture, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 13.06(a) at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which such money was received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee, subject to the provisions of Section 6.01 of this Indenture, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee or representative on behalf of such holder), to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or representative on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Indebtedness to participate in any payment or distribution pursuant to this Article 13, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 13.07 . *Rights of the Trustee; Holders of Senior Indebtedness.* (a) The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 13 in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

(b) With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 13 and no implied covenants or obligations with respect to the holders of such Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and, subject to the provisions of Section 6.01 of this Indenture, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to Holders, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article 13 or otherwise.

Section 13.08 . *Subordination May Not Be Impaired. (a)* No right of any present or future holder of any Senior Indebtedness of the Company to enforce subordination provided in this Article 13 shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders, without incurring responsibility to the Holders and without impairing or releasing the subordination provided in this Article 13 or the obligations hereunder of the Holders to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising or waive any rights against the Company and any other Person.

(c) Each present and future holder of Senior Indebtedness shall be entitled to the benefit of the provisions of this Article notwithstanding that such holder is not a party to this Indenture.

Section 13.09 . *Article Applicable to Paying Agents.* In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 13 shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article 13 in addition to or in place of the Trustee; provided, however, that this Section 13.09 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

Section 13.10 . *Defeasance of This Article.* Notwithstanding anything contained herein to the contrary, payments from cash or the proceeds of U.S. Government Obligations held in trust under Article 4 hereof by the Trustee and

which were deposited in accordance with the terms of Article 4 hereof and not in violation of Section 13.02 hereof for the payment of principal of and premium, if any, and interest on the Securities shall not be subordinated to the prior payment of any Senior Indebtedness or subject to the restrictions set forth in this Article, and none of the Holders or the Trustee shall be obligated to pay over any such amount to the Company or any holder of Senior Indebtedness or any representative or trustee therefor or any other creditor of the Company.

Section 13.11 . *Subordination Language to be Included in Securities.* Unless otherwise provided as contemplated by Section 3.01, each Security shall contain a subordination provision which will be substantially in the following form:

> "The Securities of this series are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full of all Senior Indebtedness (as defined in the Indenture, or as set forth in one or more indentures supplemental hereto, in or pursuant to a Board Resolution in accordance with Section 3.01 of the Indenture or in this Security). Each Holder by accepting a Security of this series agrees to such subordination and authorizes the Trustee to give it effect."

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have caused this Indenture to be duly executed as of the day and year first before written.

GENWORTH FINANCIAL, INC.

By: /s/ Victor C. Moses
Name: Victor C. Moses
Title: Senior Vice President — Chief Actuary and Acting Chief Financial Officer

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

By: /s/ R. Tarnas
Name: R. Tarnas
Title: Vice President

Exhibit 4.2

GENWORTH FINANCIAL, INC.

AND

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

FIRST SUPPLEMENTAL INDENTURE

Dated as of November 14, 2006

to the

INDENTURE

Dated as of November 14, 2006

TABLE OF CONTENTS

FIRST SUPPLEMENTAL INDENTURE, dated as of November 14, 2006 (the " **Supplemental Indenture** "), between GENWORTH FINANCIAL, INC., a Delaware corporation (the " **Company** ") having its principal office at 6620 West Broad Street, Richmond, Virginia 23230, and THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee (the " **Trustee** ").

WITNESSETH:

WHEREAS, the Company and the Trustee have heretofore executed and delivered a certain Indenture, dated as of November 14, 2006 (the " **Indenture** "; capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture), providing for the issuance from time to time of Securities;

WHEREAS, Section 9.01 of the Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee without the consent of any Holder of any Securities to establish the form or terms of Securities of any series as permitted by Section 2.01 or 3.01 of the Indenture;

WHEREAS, pursuant to Sections 2.01 and 3.01 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Supplemental Indenture;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been satisfied; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities of the series established by this Supplemental Indenture by the Holders thereof from time to time on or after the date hereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all such Holders, that the Indenture is supplemented and amended, to the extent and for the purposes expressed herein, as follows:

ARTICLE 1
D EFINITIONS

Section 1.01 . *Definitions.* For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, (i) references to any Article, Section or subdivision thereof are references to an Article, Section or other subdivision of this Supplemental Indenture and (ii) capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and the following terms used in this Supplemental Indenture have the following respective meanings:

“ **Additional Interest** ” means the interest, if any, that shall accrue on any interest on the Notes the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in Section 2.01(e) from the applicable Interest Payment Date.

“ **Alternative Payment Mechanism** ” has the meaning set forth in Section 2.01(h).

“ **Applicable Percentage** ” means the result, expressed as a percentage, of one divided by (a) 0.75 with respect to any repayment, redemption or repurchase on or prior to November 15, 2016, (b) 0.50 with respect to any repayment, redemption or repurchase after November 15, 2016 and on or prior to November 15, 2036 and (c) 0.25 with respect to any repayment, redemption or repurchase after November 15, 2036 and prior to November 15, 2046.

“ **Bankruptcy Event** ” means any of the events set forth in Section 5.01(3) or Section 5.01(4) of the Indenture.

“ **Business Day** ” is any day, other than (i) a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (ii) on or after November 15, 2016, a day that is not a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

“ **Calculation Agent** ” means The Bank of New York Trust Company, N.A., or any other firm appointed by the Company, acting as calculation agent for the Notes.

“ **Commercially Reasonable Efforts** ” has, with respect to the Replacement Capital Obligation, the meaning set forth in Section 2.01(d)(vi), and with respect to the Alternative Payment Mechanism, the meaning set forth in Section 2.01(h)(iv).

“ **Comparable Treasury Issue** ” means the U.S. Treasury security selected by the Premium Calculation Agent as having a maturity comparable to the term remaining from the Early Redemption Date to November 15, 2016 (the **“Remaining Life”**) 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 term.

“ **Comparable Treasury Price** ” means, with respect to an Early Redemption Date (1) the average of five Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest Reference

Treasury Dealer Quotations, or (2) if the Premium Calculation Agent obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.

" **Current Market Price** " means with respect to the Common Stock on any date, the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Stock is traded or quoted. If the Common Stock is not either listed or quoted on any U.S. securities exchange on the relevant date, the Current Market Price shall be the last quoted bid price per share for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the Current Market Price shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

" **Debt Exchangeable for Equity** " means a security (or combination of securities) that:

(i) gives the holder a beneficial interest in (a) debt securities of the Company that are Non-Cumulative and that are the most junior subordinated debt of the Company (or rank *pari passu* with the most junior subordinated debt of the Company) and (b) a fractional interest in a stock purchase contract;

(ii) includes a remarketing feature pursuant to which the subordinated debt of the Company is remarketed to new investors commencing within five years from the date of issuance of the security or earlier in the event of an early settlement event based on one or more financial tests or other express terms set forth in the terms of such securities or related transaction agreements;

(iii) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Non-Cumulative Preferred Stock;

(iv) includes a replacement capital covenant substantially similar to the Replacement Capital Covenant, *provided* that such replacement capital covenant will apply to such security (or combination of securities) and to the Qualifying Non-Cumulative Preferred Stock and will not include Debt Exchangeable for Equity in the definition of Qualifying Capital Securities;

(v) after the issuance of such Qualifying Non-Cumulative Preferred Stock, provides the holder of the security with a beneficial interest in such Qualifying Non-Cumulative Preferred Stock;

(vi) includes a provision granting the Company a security interest in the debt securities referred to in clause (i)(a) to secure the holders' obligation to purchase Qualifying Non-Cumulative Preferred Stock; and

(vii) includes a provision defining a failed remarketing and specifying that the consequences of a failed remarketing will be that the Qualifying Non-Cumulative Preferred Stock will be acquired in exchange for the debt securities.

" **Deferral Period** " has the meaning set forth in Section 2.01(g)(i).

" **Distribution Date** " means, as to any securities or combination of securities, the dates on which periodic Distributions on such securities are scheduled to be made.

" **Distribution Period** " means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but excluding the next succeeding Distribution Date for such securities.

" **Distributions** " means, as to a security or combination of securities, dividends, interest payments or other income distributions to the holders thereof that are not Subsidiaries of the Company.

" **Early Redemption Date** " means any date fixed for redemption of the Notes by the Company, at the Company's option, *provided* that, unless otherwise specified by the Company, a Repayment Date will not be an Early Redemption Date.

" **Eligible Proceeds** " means, with respect to any Interest Payment Date, the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the 180-day period prior to such Interest Payment Date from the issuance or sale of Qualifying Securities, subject to the Warrant Issuance Cap, the Preferred Stock Issuance Cap and the Share Cap, as applicable, to Persons that are not Subsidiaries.

" **Final Maturity Date** " has the meaning set forth in Section 2.01(d)(iv).

" **Intent-Based Replacement Disclosure** " means, as to any security or combination of securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer will redeem or repurchase such securities only with the proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or repurchase that are as or more equity-like than the securities then being redeemed or repurchased, raised within 180 days prior to the applicable redemption or repurchase date.

" **Interest Payment Date** " means a Quarterly Interest Payment Date or a Semi-Annual Interest Payment Date, as the case may be.

" **Interest Period** " means the period from and including any Interest Payment Date (or, in the case of the first Interest Payment Date, November 14, 2006) to but excluding the next Interest Payment Date.

" **Make-Whole Price** " means, for any Early Redemption Date, the sum, as calculated by the Premium Calculation Agent, of the present values of the remaining scheduled payments of principal (discounted from November 15, 2016) and interest that would have been payable to and including November 15, 2016 (discounted from their respective Interest Payment Dates) on the Notes to be redeemed (not including any portion of such payments of interest accrued to the Early Redemption Date) to the Early Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 25 basis points; plus accrued and unpaid interest on the principal amount being redeemed to the Early Redemption Date.

" **Mandatorily Convertible Preferred Stock** " means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

" **Mandatory Trigger Provision** " means as to any security or combination of securities (together in this definition, "securities"), provisions in the terms thereof or of the related transaction agreements that (A) require, or at its option in the case of non-cumulative perpetual preferred stock permit, the issuer of such securities to make payment of Distributions on such securities only pursuant to the issuance and sale of Common Stock, rights to purchase Common Stock or Qualifying Non-Cumulative Preferred Stock, within two years of a failure by the Company to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in an amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, provided that the amount of Qualifying Non-Cumulative Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed 25% of the liquidation or principal amount of such securities, (B) if the Company issues any securities other than Qualifying Non-Cumulative Preferred Stock as contemplated in (A) above, prohibit the Company from repurchasing any Common Stock prior to the date six months after the issuer applies the net proceeds of the sales described in clause (A) to pay such unpaid Distributions in full and (C) upon any liquidation, dissolution, winding-up, reorganization or in connection with any

insolvency, receivership or proceeding under any bankruptcy law with respect to the Company, limit the claim of the holders of such securities (other than non-cumulative perpetual preferred stock) for Distributions that accumulate during a period in which the Company fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements to (x) 25% of the principal amount of such securities then outstanding, in the case of securities not permitting the issuance and sale pursuant to the provisions described in clause (A) above of securities other than Common Stock or rights to acquire Common Stock, or (y) two years of accumulated and unpaid Distributions (including compounded amounts) in all other cases. No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision or as a result of the issuer's exercise of its right under an Optional Deferral Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

" **Market Disruption Event** " means for purposes of sales of Qualifying Securities pursuant to the Alternative Payment Mechanism or sales of Replacement Capital Securities pursuant to the Replacement Capital Obligation, as applicable (collectively, the " **Permitted Securities** "), the occurrence or existence of any of the following events or sets of circumstances:

(a) trading in securities generally (or shares of the Company's securities specifically) on the New York Stock Exchange or any other national securities exchange or over-the-counter market on which Common Stock and/or Preferred Stock is then listed or traded shall have been suspended or its settlement generally shall have been materially disrupted or minimum prices shall have been established on any such market or exchange by the Commission, by the relevant exchange or any other regulatory body or governmental authority having jurisdiction that materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Permitted Securities;

(b) the Company would be required to obtain the consent or approval of its shareholders or of a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue the Permitted Securities, and fails to obtain such consent or approval notwithstanding its commercially reasonable efforts to such effect;

(c) an event occurs and is continuing as a result of which the offering document for the offer and sale of the Permitted Securities would, in the Company's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such offering document or necessary to make the statements in such offering document not misleading and either (i) the disclosure of such event at the time the event occurs, in the Company's reasonable judgment, would have a material adverse effect on the Company's business or (ii) the disclosure relates to a previously undisclosed

proposed or pending material business transaction and the Company has a bona fide business reason for keeping the same confidential or the disclosure of which would impede the Company's ability to consummate that transaction; *provided* that one or more events described under this clause (c) shall not constitute a Market Disruption Event with respect to more than one Semi-Annual Interest Payment Date or two consecutive Quarterly Interest Payment Dates;

(d) the Company reasonably believes that the offering document for the offer and sale of the Permitted Securities would not be in compliance with a rule or regulation of the Commission (for reasons other than those referred to in the immediately preceding clause (c)) and the Company is unable to comply with such rule or regulation or such compliance is unduly burdensome; *provided* that no single suspension contemplated by this clause (d) may exceed 90 consecutive days and multiple suspension periods contemplated by this clause (d) may not exceed an aggregate of 180 days in any 360-day period;

(e) there is a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, or the effect of international conditions on the financial markets in the United States, that materially disrupts the markets on which the Company's securities are trading, such as to make it, in the Company's judgment, impracticable to proceed with the offer and sale of the Permitted Securities;

(f) a material disruption shall have occurred in commercial banking or securities settlement or clearing services in the United States; or

(g) a banking moratorium shall have been declared by federal or state authorities of the United States, that results in a disruption of any of the markets on which the Company's securities are trading.

" **Non-Cumulative** " means, with respect to any securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Securities that include either (i) provisions requiring the Company to issue Qualifying Non-Cumulative Preferred Stock and Common Stock or rights to purchase Common Stock and apply the proceeds to pay unpaid Distributions on terms substantially similar to the terms of the Alternative Payment Mechanism described in Section 2.01(h), or (ii) a Mandatory Trigger Provision shall also be deemed to be "Non-Cumulative" for all purposes herein other than the definitions of "Qualifying Non-Cumulative Preferred Stock" and "Perpetual Non-Cumulative Preferred Stock" and the use of the term under (b) of "Optional Deferral Provision."

" **Notes** " has the meaning set forth in Section 2.01(a).

" **Notice of Repayment** " has the meaning set forth in Section 3.03.

" **Optional Deferral Provision** " means, as to any securities, a provision in the terms thereof or of the related transaction agreements to the following effect:

(a) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to 5 years or, if an event substantially similar to a Market Disruption Event, with respect to such issuer, is continuing, ten years, without any remedy other than Permitted Remedies and the obligation described in clause (b) below; and

(b) if the issuer of such securities has exhausted its right to defer Distributions and no event substantially similar to a Market Disruption Event, with respect to such issuer, is continuing, the issuer will be obligated to issue common stock, rights to purchase common stock and/or Qualifying Non-Cumulative Preferred Stock in an amount such that the net proceeds of such sale equal or exceed the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and to apply the net proceeds of such sale to pay such unpaid Distributions in full.

" **Permitted Remedies** " means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded), and

(b) complete or partial prohibitions preventing the issuer from paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

" **Perpetual Non-Cumulative Preferred Stock** " means Non-Cumulative perpetual preferred stock of the Company that is either non-callable or callable with a replacement capital covenant substantially similar to the Replacement Capital Covenant or callable with a Mandatory Trigger Provision and subject to Intent-Based Replacement Disclosure.

" **Preferred Stock Issuance Cap** " has the meaning set forth in Section 2.01(h)(ii).

" **Premium Calculation Agent** " means a Reference Treasury Dealer appointed by the Company, or any other firm appointed by the Company, or if any such firm is unwilling or unable to select the Comparable Treasury Issue or calculate the Make-Whole Price or Special Event Make-Whole Price, an investment banking institution of national standing appointed by the Trustee after consultation with the Company.

" **Qualifying Capital Securities** " means securities (other than Common Stock, rights to acquire Common Stock and securities convertible into Common Stock, such as Mandatorily Convertible Preferred Stock and Debt Exchangeable for Equity) that, in the determination of the Company's Board of Directors, reasonably construing the definitions and other terms hereof, meet one of the following criteria:

(i) in connection with any redemption, repayment or repurchase of Notes on or prior to November 15, 2016:

(A) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon the liquidation, dissolution or winding-up of the Company, (2) have terms that are substantially similar to the terms of the Notes described in this Supplemental Indenture and the Indenture and (3) are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant or have a Mandatory Trigger Provision, a Ten-Year Optional Deferral Provision and are subject to Intent-Based Replacement Disclosure;

(B) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon the liquidation, dissolution or winding-up of the Company, (2) are Non-Cumulative, (3) have no maturity or a maturity of at least 50 years and (4) are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant or have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure; or

(C) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* or junior to other preferred stock of the issuer, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant and (4) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision; or

(ii) in connection with any repayment, redemption or repurchase of Notes after November 15, 2016 and on or prior to November 15, 2036:

(A) all securities described under clause (i) of this definition;

(B) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Company, (2) have an Optional Deferral Provision or a Ten-Year Optional Deferral Provision, (3) have no maturity or a maturity of at least 50 years and (4) are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant;

(C) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Company, (2) are Non-Cumulative and (3) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure;

(D) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Company, (2) are Non-Cumulative, (3) have no maturity or a maturity of at least 40 years and (4) are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant or have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure;

(E) securities issued by the Company or its Subsidiaries that (1) would rank junior to all of the senior and subordinated debt of the Company other than the Notes, (2) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision and (3) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure;

(F) cumulative preferred stock issued by the Company or its Subsidiaries that (1) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (2) (a) has no maturity or a maturity of at least 50 years and (b) is subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant; or

(G) other securities issued by the Company or its Subsidiaries that (1) rank upon a liquidation, dissolution or winding-up of the Company either (a) *pari passu* with or junior to the Notes or (b) *pari passu* with the claims of the Company's trade creditors and junior to all of the Company's long-term indebtedness for money borrowed (other than the Company's long-term indebtedness for money borrowed from time to time outstanding that by its terms ranks *pari passu* with such securities on a liquidation, dissolution or winding-up of the Company), and (2) either (a) have no maturity or a maturity of at least 40 years, are subject to Intent-Based Replacement Disclosure and have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision or (b) have no maturity or a maturity of at least 25 years, are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant and have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision; or

(iii) in connection with any repayment, redemption or repurchase of Notes after November 15, 2036, and on or prior to November 15, 2046:

(A) all securities described under clauses (i) or (ii) of this definition;

(B) Preferred Stock issued by the Company that (1) has no maturity or a maturity of at least 50 years and is subject to Intent-Based Replacement Disclosure and (2) has an Optional Deferral Provision or a Ten-Year Optional Deferral Provision;

(C) securities issued by the Company or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Company, (2) either (a) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure or (b) have no maturity or a maturity of at least 30 years and are subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant and (3) have an Optional Deferral Provision or a Ten-Year Optional Deferral Provision;

(D) securities issued by the Company or its Subsidiaries that (1) would rank junior to all of the senior and subordinated debt of the Company other than the Notes, (2) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision and (3) have no maturity or a maturity of at least 30 years and are subject to Intent-Based Replacement Disclosure; or

(E) cumulative preferred stock issued by the Company or its Subsidiaries that either (1) has no maturity or a maturity of at least 50 years and is subject to Intent-Based Replacement Disclosure or (2) has a maturity of at least 40 years and is subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant.

" **Qualifying Non-Cumulative Preferred Stock** " means non-cumulative perpetual preferred stock of the Company or its Subsidiaries that ranks *pari passu* with or junior to other preferred stock of the issuer, and, for purposes of clause (A) of the definition of Mandatory Trigger Provision, contains no remedies other than Permitted Remedies and is either subject to a replacement capital covenant substantially similar to the Replacement Capital Covenant or has a Mandatory Trigger Provision and is subject to Intent-Based Replacement Disclosure.

" **Qualifying Securities** " means Qualifying Warrants and Perpetual Non-Cumulative Preferred Stock.

" **Qualifying Warrants** " means net share settled warrants to purchase Common Stock that have an exercise price greater than the Current Market Price of Common Stock as of their date of issuance, that the Company is not entitled to redeem for cash and that the holders of such warrants are not entitled to require the Company to repurchase for cash in any circumstance.

" **Quarterly Interest Payment Date** " has the meaning set forth in Section 2.01(e).

" **Rating Agency Event** " means the determination by the Company of a change by any nationally recognized statistical rating organization within the meaning of Rule 15c3-1 under the Exchange Act, that as of November 7, 2006 publishes a rating for the Company (a " **Rating Agency** ") in the equity credit criteria for securities such as the Notes resulting in a lower equity credit to the Company than the equity credit assigned by such Rating Agency to the Notes on November 7, 2006.

"Redemption Price " means the price at which the Notes are to be redeemed, as specified herein.

" **Reference Treasury Dealer** " means (1) each of Morgan Stanley & Co. Incorporated, Deutsche Bank Securities Inc. and Goldman, Sachs & Co. and its successors, *provided* , however, that if the foregoing shall cease to be a primary U.S. government securities dealer in New York City (a " **Primary Treasury Dealer** ") the Company shall substitute therefor another Primary Treasury Dealer and (2) any other Primary Treasury Dealers selected by the Premium Calculation Agent after consultation with the Company.

" **Reference Treasury Dealer Quotations** " means, with respect to each Reference Treasury Dealer and any Early Redemption Date, the average, as determined by the Premium Calculation Agent, 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 Premium Calculation Agent at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

" **Regular Record Date** " for the interest payable on any Interest Payment Date with respect to the Notes means (i) in the case of Notes represented by one or more Global Securities, the Business Day preceding such Interest Payment Date and (ii) in the case of Notes not represented by one or more Global Securities, the date which is fifteen calendar days next preceding such Interest Payment Date (whether or not a Business Day).

" **Repayment Date** " has the meaning set forth in Section 2.01(d)(ii).

" **Replacement Capital Covenant** " means the Replacement Capital Covenant, dated as of November 14, 2006, of the Company, without giving any effect to any amendment or supplement thereto.

“ **Replacement Capital Obligation** ” has the meaning set forth in Section 2.01(d)(ii).

“ **Replacement Capital Securities** ” means,

(i) Common Stock and rights to acquire Common Stock (including Common Stock and rights to acquire Common Stock issued pursuant to the Company’s reinvestment plan or employee benefit plans);

(ii) Mandatorily Convertible Preferred Stock;

(iii) Debt Exchangeable for Equity; and

(iv) Qualifying Capital Securities.

“ **Scheduled Redemption Date** ” has the meaning set forth in Section 2.01(d)(i).

“ **Semi-Annual Interest Payment Date** ” has the meaning set forth in Section 2.01(e).

“ **Share Cap** ” has the meaning set forth in Section 2.01(h)(ii).

“ **Special Event Make-Whole Price** ” means, for any Early Redemption Date, the sum, as calculated by the Premium Calculation Agent, of the present values of the remaining scheduled payments of principal (discounted from November 15, 2016) and interest that would have been payable to and including November 15, 2016 (discounted from their respective Interest Payment Dates) on the Notes to be redeemed (not including any portion of such payments of interest accrued to the Early Redemption Date) to the Early Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, plus accrued and unpaid interest on the principal amount being redeemed to the Early Redemption Date.

“ **Supplemental Notice** ” has the meaning set forth in Section 3.03.

“ **Tax Event** ” means that the Company has requested and received an Opinion of Counsel experienced in such matters to the effect that, as a result of any:

(a) amendment to or change in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or becomes effective after the initial issuance of the Notes;

(b) proposed change in those laws or regulations that is announced after the initial issuance of the Notes;

(c) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the initial issuance of the Notes; or

(d) threatened challenge asserted in connection with an audit of the Company or its Subsidiaries, or a threatened challenge asserted in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the Notes, which challenge becomes publicly known or otherwise becomes widely known to tax practitioners after the initial issuance of the Notes,

there is more than an insubstantial risk that interest payable by the Company on the Notes is not, or will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

" **Ten-Year Optional Deferral Provision** " means, as to any securities, a provision in the terms thereof or of the related transaction agreements to the effect that the issuer of such securities thereof may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

" **Three-month LIBOR** " means, with respect to any Interest Period from and including November 15, 2016, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that quarterly Interest Period ending on the next Interest Payment Date (for the purposes of this definition, the " **Relevant Period** ") that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the LIBOR determination date for that Interest Period. If such rate does not appear on MoneyLine Telerate Page 3750, three-month LIBOR shall be determined on the basis of the rates at which deposits in U.S. dollars for the Relevant Period and in a principal amount of not less than $1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Company), at approximately 11:00 a.m., London time on the LIBOR determination date for that Interest Period. The Calculation Agent shall request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, three-month LIBOR with respect to that Interest Period shall be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of such quotations. If fewer than two quotations are provided, three-month LIBOR with respect to that Interest Period shall be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (after consultation with the Company), at approximately 11:00 a.m., New York City time, on the first day of that Interest Period for loans in U.S. dollars to leading European banks for the Relevant Period and in a principal amount of not less than

$1,000,000. However, if fewer than three banks selected by the Calculation Agent to provide quotations are quoting as described above, three-month LIBOR for that Interest Period shall be the same as three-month LIBOR as determined for the previous Interest Period or, in the case of the Interest Period commencing on November 15, 2016, the interest rate on the Notes shall be 7.37785%. The establishment of three-month LIBOR for each Interest Period commencing on or after November 15, 2016 by the Calculation Agent shall (in the absence of manifest error) be final and binding. For purposes of this definition, " **London banking day** " means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England; " **LIBOR determination date** " means the second London banking day immediately preceding the first day of the relevant Interest Period; " **MoneyLine Telerate Page** " means the display on MoneyLine Telerate, Inc., or any successor service, on the Telerate Page 3750 or any replacement page or pages on that service; and " **Telerate Page 3750** " means the display designated on page 3750 on MoneyLine Telerate Page (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. Dollar deposits).

" **Treasury Rate** " means, with respect to any Early Redemption Date, the yield, calculated on the third Business Day preceding the Early Redemption Date, under the heading that represents the average for the immediately preceding week, appearing in the most recently published statistical release designated H.15(519) or any successor publication that is published weekly by the Board of Governors of the Federal Reserve System and that establishes yields on actively traded U.S. Treasury securities adjusted to constant maturity under the caption Treasury Constant Maturities, for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Remaining Life (as defined under "Comparable Treasury Issue" above), yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such date of redemption.

" **Warrant Issuance Cap** " has the meaning set forth in Section 2.01(h)(ii).

ARTICLE 2
TERMS OF SERIES OF SECURITIES

Section 2.01 . *Terms of Series of Securities.* Pursuant to Sections 2.01 and 3.01 of the Indenture, there is hereby established a series of Securities, the terms of which shall be as follows:

(a) *Designation* . The Securities of this series shall be known and designated as the "6.15% Fixed-to-Floating Rate Junior Subordinated Notes due 2066" of the Company (the " **Notes** ").

(b) *Issue Price and Aggregate Principal Amount* . The Notes shall be issued at a price of 99.712% per each $1,000 principal amount of the Notes, and the maximum aggregate principal amount of the Notes which may be authenticated and delivered under the Indenture and this Supplemental Indenture shall be $600,000,000 (except for Notes authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other Notes pursuant to (i) Section 2.03, 3.04, 3.05, 3.06, 9.04 or 11.07 of the Indenture or (ii) Article 3 of this Supplemental Indenture).

(c) *Denominations* . The Notes shall be issued only in fully registered form, and the authorized denominations of the Notes shall be $1,000 principal amount and any integral multiple thereof.

(d) *Scheduled Redemption Date* . (i) The Company shall repay the Notes on November 15, 2036 (the " **Scheduled Redemption Date** ") from the net proceeds raised from the issuance of Replacement Capital Securities on or before the Scheduled Redemption Date pursuant to Section 2.01(d)(ii), and valuing, in the case of Mandatorily Convertible Preferred Stock, Debt Exchangeable for Equity or Qualifying Capital Securities, the net proceeds raised at 100%, and in the case of Common Stock and rights to acquire Common Stock (including Common Stock and rights to acquire Common Stock issued pursuant to the Corporation's reinvestment plan or employee benefit plans), the net proceeds raised at the Applicable Percentage. If the Company has not raised sufficient net proceeds to repay the Notes in full on the Scheduled Redemption Date, it shall (i) repay the Notes on the Scheduled Redemption Date in part to the extent of the proceeds so raised and (ii) continue to comply with Section 2.01(d)(ii). For the avoidance of doubt, a Repayment Date shall not constitute a Maturity for the purposes of Section 5.01(2) or 5.03(2) of the Indenture, unless the Company has given notice to the Trustee fixing such date for redemption and stating that the Company has determined to treat that date as a Maturity, in which case such date shall constitute a Maturity for the Notes specified in the applicable Notice of Repayment or Supplemental Notice, as the case may be.

(ii) The Company shall use its Commercially Reasonable Efforts, subject to a Market Disruption Event, to raise sufficient net

proceeds from the issuance of Replacement Capital Securities in a 180-day period ending on the date a Notice of Repayment is given pursuant to Section 3.03 to permit repayment of the Notes Outstanding in full on the Scheduled Redemption Date (the " **Replacement Capital Obligation** "). If the Company has not raised sufficient net proceeds pursuant to the preceding sentence to permit repayment of all principal and accrued and unpaid interest on the Notes on the Scheduled Redemption Date, it may not otherwise redeem Notes in excess of the proceeds allocated to the Notes as provided below, the unpaid amount shall remain outstanding from quarter to quarter and bear interest, payable on the Quarterly Interest Payment Dates, until repaid, and the Replacement Capital Obligation shall continue to apply to each subsequent Quarterly Interest Payment Date (substituting the relevant Quarterly Interest Payment Date for the Scheduled Redemption Date and a 90-day period for the 180-day period in the definition of "Replacement Capital Obligation") (the Scheduled Redemption Date and each such subsequent Quarterly Interest Payment Date, a " **Repayment Date** ") and shall terminate (A) on the Interest Payment Date on which the Company has redeemed the Notes in full in accordance with the Replacement Capital Obligation, (B) when the Notes are otherwise paid in full on the Final Maturity Date or (C) upon an Event of Default resulting in acceleration of the Notes pursuant to Section 5.02 of the Indenture. Unless the Replacement Capital Obligation shall have terminated as aforesaid and except under the circumstances set forth in Section 2.01(d)(vii), the Company's failure to use Commercially Reasonable Efforts to raise sufficient proceeds from the issuance of Replacement Capital Securities to redeem the Notes in full in connection with the redemption of the Notes on a Repayment Date shall constitute a default under clause (5) of the definition of Enforcement Event in the Indenture, but shall in no event constitute an Event of Default. Notwithstanding anything to the contrary in the Indenture or this Supplemental Indenture, the Trustee shall have no obligation to exercise any remedies with respect to any Enforcement Event arising from such default unless directed to do so in accordance with and subject to the conditions set forth in Sections 5.12 and 6.02(4) of the Indenture. The Trustee may conclusively assume that the Replacement Capital Obligation has been complied with unless the Company or the Holders of 25% in aggregate principal amount of the Notes have given the Trustee notice to the contrary. The Company may modify or terminate the Replacement Capital Obligation only in accordance with Section 9.02 of the Indenture except that the Company may amend the Replacement Capital Obligation at any time in accordance with Section 9.01 of the Indenture, (A) where such amendment is not adverse to the Holders of the Notes and the Company has delivered to such Holders and the Trustee an Officers' Certificate stating that such amendment is not adverse to such Holders, (B) to impose additional restrictions on the types of securities qualifying as

Replacement Capital Securities, and the Company has delivered to such Holders and the Trustee an Officers' Certificate to that effect or (C) to eliminate Common Stock and/or Mandatorily Convertible Preferred Stock (but only to the extent exchangeable for Common Stock), as securities the proceeds of which may be included for purposes of the Replacement Capital Obligation if, in the case of this clause (C), the Company has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Company's earnings per share as calculated for financial reporting purposes.

(iii) Notwithstanding anything to the contrary in this Supplemental Indenture, if the Company redeems the Notes pursuant to this Section 2.01(d) or Section 2.01(j) when any deferred interest remains unpaid and at a time when the Alternative Payment Mechanism is otherwise applicable, the unpaid deferred interest (including Additional Interest thereon) may only be paid pursuant to the Alternative Payment Mechanism.

(iv) Any principal amount of the Notes, together with accrued and unpaid interest, shall be due and payable on November 15, 2066 (the " **Final Maturity Date"**), regardless of the amount of Replacement Capital Securities the Company has issued and sold by that time.

(v) If any date fixed for redemption or repayment pursuant to this Section 2.01(d) is not a Business Day, then payment of the Redemption Price or repayment of the principal amount of the Notes due on that date shall be made on the next day that is a Business Day, without any interest or other payment as a result of such delay.

(vi) " **Commercially Reasonable Efforts** " to sell Replacement Capital Securities means commercially reasonable efforts by the Company to complete the offer and sale of Replacement Capital Securities to third parties that are not Subsidiaries of the Company in public offerings or private placements. The Company shall not be considered to have made Commercially Reasonable Efforts to effect a sale of Replacement Capital Securities if it determines to not pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

(vii) The Company shall not be required to redeem the Notes on any Repayment Date, and such failure to redeem shall not constitute an Enforcement Event, to the extent of the net proceeds the Company was not able to raise as a result of the occurrence of a Market Disruption Event. The Company shall deliver to the Trustee an Officer's Certificate (which the Trustee shall promptly forward upon receipt to each Holder of the Notes) on the date the related Notice of Repayment pursuant to Section 3.03

is given, or prior to the date the related Notice of Repayment required by Section 3.03 would have been given, certifying that:

(A) a Market Disruption Event was existing during the 180-day period preceding the date of such certificate or, in the case of any Quarterly Interest Payment Date, the 90-day period preceding the date of such certificate; and

(B) either (1) the Market Disruption Event continued for the entire 180-day period or 90-day period, as the case may be, or (2) the Market Disruption Event continued for only part of the period, but the Company was unable after Commercially Reasonable Efforts to raise sufficient net proceeds during the rest of that period to permit repayment of the Notes in full.

(viii) Net proceeds that the Company is permitted to apply to repayment of the Notes on the Repayment Dates pursuant to Section 2.01(d)(i) above shall be applied, first, to pay deferred interest in chronological order to the extent of Eligible Proceeds under the Alternative Payment Mechanism (the amount thereof to be certified by the Company to the Trustee in an Officers' Certificate), second, to pay current interest that the Company is not paying from other sources and, third, to repay the principal of Notes; *provided* that if the Company raises less than $5 million of net proceeds from the sale of Replacement Capital Securities during the applicable 180- or 90-day period preceding the date the applicable Notice of Repayment is given pursuant to Section 3.03, the Company shall deliver the Trustee an Officers' Certificate to such effect and the Company shall not be required to repay any Notes on such Repayment Date, but the Company shall use those net proceeds to repay the Notes on the next Repayment Date as of which the Company has raised at least $5 million of net proceeds; *provided, further,* that if the net proceeds allocable to repay the principal of the Notes shall not be divisible by the authorized denominations of the Notes into a whole number, the net proceeds so allocable shall be deemed to be equal to the next lower amount divisible by such authorized denominations into a whole number; *provided , further* , that if the Company is obligated to use Commercially Reasonable Efforts to sell Replacement Capital Securities and apply the net proceeds to payments of principal of or interest on any outstanding securities in addition to the Notes and the Company shall deliver the Trustee an Officers' Certificate to such effect, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for such payments shall be applied to the Notes and those other securities having the same scheduled repayment date or scheduled redemption date as the Notes *pro rata* in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other securities having a later scheduled repayment date or scheduled redemption date until the principal of and all accrued and unpaid interest on the Notes has been paid in full.

(ix) In the event the Company has delivered a notice to the Trustee pursuant to Section 3.01 in connection with any Repayment Date, the principal amount of Notes payable on such Repayment Date, if any, shall be the principal amount set forth in the Notice of Repayment accompanying such notice and such principal amount of Notes shall be repaid on such Repayment Date pursuant to Article 3, subject to this Section 2.01(d).

(x) The obligation of the Company to repay the Notes pursuant to this Section 2.01(d) on any date prior to the Final Maturity Date shall be subject to its obligations under Article 13 of the Indenture to the holders of Senior Indebtedness.

(e) *Rate of Interest* . Interest on the Notes shall accrue from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from November 14, 2006. The Notes shall bear interest (i) from and including November 14, 2006 to but excluding November 15, 2016 at the annual rate of 6.15%, computed on the basis of a 360-day year comprised of twelve 30-day months and (ii) from and including November 15, 2016 to but excluding the Final Maturity Date at an annual rate equal to Three-month LIBOR plus 2.0025%, computed on the basis of a 360-day year and the actual number of days elapsed. Subject to Section 2.01(g) and Section 2.01(h), interest on the Notes shall be payable in cash (i) semi-annually in arrears on May 15 and November 15 of each year, commencing on May 15, 2007, until November 15, 2016 (each such date, a " **Semi-Annual Interest Payment Date** ") and (ii) quarterly in arrears on February 15, May 15, August 15 and November 15, commencing February 15, 2017 until the Final Maturity Date (each such date, a " **Quarterly Interest Payment Date** "). Any installment of interest (or portion thereof) deferred in accordance with Section 2.01(g) or otherwise unpaid shall bear interest, to the extent permitted by law, at the rate of interest then in effect on the Notes, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date, until paid in accordance with Section 2.01(h). If any Semi-Annual Interest Payment Date would otherwise fall on a day that is not a Business Day, the interest payment due on that date shall be postponed to the next day that is a Business Day and no interest shall accrue as a result of that postponement. If any Quarterly Interest Payment Date is not a Business Day, the Quarterly Interest Payment Date shall be postponed to the following Business Day unless such Business Day would fall in the next calendar month, in which case the Quarterly Interest Payment Date shall be the preceding Business Day. However, if any Quarterly Interest Payment Date falls on a date fixed for early redemption, or other redemption or repayment, and such day is not a Business Day, the interest payment due on that date shall be postponed to the next day that is a Business Day and no interest shall accrue as a result of that postponement.

(f) *To Whom Interest is Payable* . Interest shall be payable on each Interest Payment Date to each Person in whose name the Notes are registered at the close of business on the Regular Record Date for such Interest Payment Date, except that (i) interest payable on any Notes on any Repayment Date or Redemption Date and (ii) interest payable on the Final Maturity Date shall be paid to the Person to whom principal is paid.

(g) *Option to Defer Interest Payments* . (i) The Company shall have the right, on one or more occasions, to defer the payment of interest on the Notes for one or more consecutive Interest Periods during any period of up to 10 years (which may include a combination of semi-annual and quarterly Interest Periods), (a " **Deferral Period** ") without giving rise to an Event of Default or, unless otherwise indicated below, an Enforcement Event. The Company's right to defer interest payments shall end on the earliest of (A) the Final Maturity Date, (B) any redemption of the Notes in full prior to the Final Maturity Date or (C) the acceleration of the Notes following an Event of Default. Interest on the Notes shall continue to accrue during Deferral Periods at the then-applicable interest rate on the Notes, compounded on each Interest Payment Date, subject to applicable law.

(ii) The Company shall (A) not later than the Business Day immediately following the first Interest Payment Date during a Deferral Period on which the Company elects to pay current interest or, if earlier, the Business Day following the fifth anniversary of the commencement of the relevant Deferral Period, be required to use Commercially Reasonable Efforts to sell Qualifying Securities pursuant to the Alternative Payment Mechanism, subject to the Warrant Issuance Cap, the Preferred Stock Issuance Cap and the Share Cap, and unless the Company has delivered to the Trustee notice of a Market Disruption Event, to apply the Eligible Proceeds to the payment of any deferred interest (and Additional Interest thereon) on the next Interest Payment Date, and this requirement shall continue in effect until the end of the Deferral Period; and (B) not pay deferred interest on the Notes (and Additional Interest thereon) prior to the Final Maturity Date from any source other than Eligible Proceeds unless otherwise required at the time by any applicable regulatory authority, although it may pay current interest at all times from any available funds. The Company's failure to pay interest on the Notes in accordance with the Alternative Payment Mechanism as required by this Supplemental Indenture shall constitute a default under clause (5) of the definition of Enforcement Event in the Indenture, but shall in no event constitute an Event of Default. Notwithstanding anything to the contrary in the Indenture or this Supplemental Indenture, the Trustee shall have no obligation to exercise any remedies with respect to any Enforcement Event

arising from such default unless directed to do so in accordance with and subject to the conditions set forth in Sections 5.12 and 6.02(4) of the Indenture. The Trustee may conclusively assume that the Alternative Payment Mechanism has been complied with unless the Company or the Holders of 25% in aggregate principal amount of the Notes have given the Trustee notice to the contrary.

(iii) If the Company is involved in a business combination where immediately after its consummation more than 50% of the surviving entity's voting stock is owned by the shareholders of the other party to the business combination, then the Alternative Payment Mechanism shall not apply to any interest that is deferred and unpaid as of the date of consummation of the business combination. The Alternative Payment Mechanism shall apply, however, to any interest on the Notes that is deferred after such date.

(iv) To the extent that the Company applies proceeds from the sale of Qualifying Securities to pay interest, the Company shall allocate the proceeds to deferred payments of interest (and Additional Interest thereon) in chronological order based on the date each payment was first deferred.

(v) At the end of a 10-year Deferral Period, the Company shall pay all deferred interest. After the Company makes all interest payments that the Company has deferred, including Additional Interest on the deferred payments, the Company may again defer interest payments during new Deferral Periods of up to 10 years, subject to the requirements therefor set forth herein.

(vi) The Company shall give the Holders of the Notes and the Trustee written notice of its election to begin a Deferral Period at least one Business Day before the Regular Record Date for the Interest Payment Date on which such Deferral Period shall begin. However, the Company's failure to pay interest on an Interest Payment Date shall constitute the commencement of a Deferral Period unless the Company pays such interest within five Business Days of the Interest Payment Date, whether or not it provides a notice of deferral. For the avoidance of doubt, the non-payment of such interest for five Business Days does not give rise to a default under the Indenture.

(vii) So long as any Notes remain Outstanding during any Deferral Period, the Company shall not, and shall not permit any of its Subsidiaries to declare or pay any dividends or any Distributions on, or redeem, purchase, acquire or make a liquidation payment on, any shares of the Company's capital stock or make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of the

Company's debt securities that rank *pari passu* with or junior to the Notes. However, at any time, including during any Deferral Period, the Company shall be permitted to: (A) pay dividends or Distributions to common shareholders in the form of additional shares of Common Stock; (B) declare or pay a dividend in connection with the implementation of a shareholders' rights plan, or issue stock under such a plan, or redeem or repurchase any rights distributed pursuant to such a plan and (C) purchase Common Stock for issuance pursuant to any employee benefit plans. In addition, if any Deferral Period lasts longer than one year, the Company shall not, subject to the limited exceptions set forth in this Section 2.01(g)(vii) and unless required to do so by any applicable regulatory authority, repurchase, or permit its Subsidiaries to purchase, Common Stock for a one-year period following the date on which all deferred interest has been paid pursuant to the Alternative Payment Mechanism. If the Company is involved in a business combination where immediately after its consummation more than 50% of the surviving entity's voting stock is owned by the shareholders of the other party to the business combination, then the immediately preceding sentence shall not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of the business combination.

(h) *Alternative Payment Mechanism* . (i) Subject to certain conditions described in Section 2.01(h)(ii) and the exception described in Section 2.01(h)(iv) below, if the Company defers interest on the Notes, it shall be required, not later than (i) the Business Day immediately following the first Interest Payment Date during a Deferral Period on which it elects to pay current interest, or (ii) if earlier, the Business Day following the fifth anniversary of the commencement of a Deferral Period, to use Commercially Reasonable Efforts to begin issuing Qualifying Securities to Persons that are not its Affiliates. The Company shall be required, with respect to any subsequent Interest Payment Date during a Deferral Period until the deferred interest has been paid in full, to use Commercially Reasonable Efforts to sell Qualifying Securities until the Company has raised an amount of Eligible Proceeds that is sufficient to pay all deferred interest (and Additional Interest thereon) accrued up to such Interest Payment Date. The Company shall not pay deferred interest (and Additional Interest thereon) on the Notes prior to the Final Maturity Date from any source other than Eligible Proceeds, unless otherwise required at the time by any applicable regulatory authority. This method of funding the payment of accrued and unpaid interest is referred to as the " **Alternative Payment Mechanism.** "

(ii) Under the Alternative Payment Mechanism, the Company shall not issue Qualifying Warrants for the purposes of the Alternative Payment Mechanism prior to the fifth anniversary of the commencement of any Deferral Period to the extent that the number of shares of Common Stock underlying any issuance of Qualifying Warrants applied to pay deferred interest on the Notes, together with the number of shares

underlying all prior issuances of Qualifying Warrants during such Deferral Period so applied, would exceed 2% of the total number of issued and outstanding shares of Common Stock as of the date of the Company's then most recent publicly available consolidated financial statements (the " **Warrant Issuance Cap** "). In addition, the Company shall not issue Perpetual Non-Cumulative Preferred Stock for the purposes of the Alternative Payment Mechanism to the extent that the net proceeds of any issuance of Perpetual Non-Cumulative Preferred Stock applied to pay deferred interest on the Notes, together with the net proceeds of all prior issuances of Perpetual Non-Cumulative Preferred Stock so applied, would exceed 25% of the aggregate principal amount of the Notes Outstanding as of November 15, 2006 (the " **Preferred Stock Issuance Cap** "). Once the Company reaches the Warrant Issuance Cap for any Deferral Period, it may not issue more Qualifying Warrants prior to the fifth anniversary of the commencement of such Deferral Period pursuant to the Alternative Payment Mechanism even if there is a subsequent increase in the number of outstanding shares of Common Stock. The Warrant Issuance Cap shall cease to apply following the fifth anniversary of the commencement of any Deferral Period, at which point the Company may only pay any deferred interest, regardless of the time at which it was deferred (other than on the Final Maturity Date), using the Alternative Payment Mechanism, subject to the Preferred Stock Issuance Cap, the Share Cap and any Market Disruption Event. If the Warrant Issuance Cap has been reached during a Deferral Period and the Company subsequently pays all deferred payments (and Additional Interest thereon), the Warrant Issuance Cap shall cease to apply, and shall only apply again once the Company starts a new Deferral Period. The Preferred Stock Issuance Cap shall apply so long as the Notes remain Outstanding and all proceeds of issuances of Perpetual Non-Cumulative Preferred Stock used to pay deferred interest hereunder shall count against such cap. The Company shall not issue Qualifying Warrants for the purposes of the Alternative Payment Mechanism to the extent that the total number of shares of Common Stock underlying such Qualifying Warrants, together with all prior issuances of Qualifying Warrants, exceeds 50 million shares (the " **Share Cap** "). The Share Cap shall apply so long as the Notes remain Outstanding, other than on the Final Maturity Date. The Company shall use commercially reasonable efforts to increase the Share Cap from time to time (without having to comply with Article 9 of the Indenture) to a number of shares of Common Stock that would allow it to satisfy its obligations with respect to the Alternative Payment Mechanism by delivering to the Trustee an Officers' Certificate setting forth the increased Share Cap. The Share Cap shall be adjusted proportionately for any change in the number of outstanding shares of Common Stock by reason of any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or other similar transaction, effective upon the effective date of any such transaction.

(iii) If, due to a Market Disruption Event or otherwise, the Company were able to raise some, but not all, Eligible Proceeds necessary to pay all deferred interest (including Additional Interest thereon) on any Interest Payment Date, the Company shall apply any available Eligible Proceeds to pay accrued and unpaid interest on the applicable Interest Payment Date in chronological order. If the Company shall have outstanding securities in addition to, and that rank *pari passu* with, the Notes under which the Company is obligated to sell Qualifying Securities and apply the net proceeds to the payment of deferred interest or Distributions and the Company shall deliver to the Trustee an Officers' Certificate to such effect, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of the deferred interest and Distributions shall be applied to the Notes and those other securities on a *pro rata* basis in accordance with their respective outstanding principal amounts, or on such other basis as any applicable regulator shall approve.

(iv) The Company shall be relieved of its obligations under the Alternative Payment Mechanism in respect of any Interest Payment Date if it delivers an Officers' Certificate to the Trustee (which the Trustee shall promptly forward upon receipt to each Holder of the Notes) no more than 30 and no less than 15 days in advance of that Interest Payment Date certifying that a Market Disruption Event was existing after the immediately preceding Interest Payment Date; and either:

(1) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such certification is provided; or

(2) the Market Disruption Event continued for only part of this period, but the Company was unable after using Commercially Reasonable Efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest.

" **Commercially Reasonable Efforts** " to sell securities in accordance with the Alternative Payment Mechanism means commercially reasonable efforts to complete the offer and sale of Qualifying Securities to third parties that are not Subsidiaries of the Company in public offerings or private placements. The Company shall not be relieved of its obligations under the Alternative Payment Mechanism if it determines not to pursue or complete the sale of Qualifying Securities due to pricing, dividend rate or dilution considerations.

(i) *Events of Default* . Clauses (1) through (4) of Section 5.01 of the Indenture shall constitute Events of Default with respect to the Notes. For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee or the Holders of the Notes under the Indenture, no breach by the Company of any other covenant or obligation under the Indenture, this Supplemental Indenture or the terms of the Notes shall be an Event of Default with respect to the Notes.

(j) *Redemption* . (i) Subject to obtaining any then-required regulatory approval, the Notes are redeemable (A) in whole or in part, at any time on or after November 15, 2016 at their principal amount plus accrued and unpaid interest to the date of redemption, *provided* that in the event of a redemption in part that the principal amount outstanding after such redemption is at least $50,000,000; (B) in whole or in part, prior to November 15, 2016, in cases not involving a Tax Event or Rating Agency Event, at their principal amount plus accrued and unpaid interest to the date of redemption or, if greater, the Make-Whole Price, *provided* that in the event of a redemption in part the principal amount outstanding after such redemption is at least $50,000,000; and (C) in whole, but not in part, prior to November 15, 2016, within 90 days after the occurrence of a Tax Event or Rating Agency Event, at their principal amount plus accrued and unpaid interest to the date of redemption or, if greater, the Special Event Make-Whole Price.

(ii) If any date fixed for redemption pursuant to this clause (j) is not a Business Day, then payment of the Redemption Price shall be made on the next day that is a Business Day, without any interest or other payment for the delay.

(iii) The Make-Whole Price and the Special Event Make-Whole Price shall be determined on the third Business Day prior to the applicable Redemption Date. The Company shall notify the Trustee of the Make-Whole Price or the Special Event Make-Whole Price, as applicable, promptly after the calculation thereof and the Trustee shall have no responsibility for such calculation. Notwithstanding Section 11.04 of the Indenture, notice of redemption pursuant to this clause (j) shall be given not less than 30 nor more than 15 days prior to the Redemption Date.

(k) *Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership* . Each Holder, by such Holder's acceptance of the Notes, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of such Notes, such Holder shall only have a claim for, and right to receive, deferred and unpaid interest (including Additional Interest thereon) that has not been paid prior to such event through the application of the Alternative Payment Mechanism to the extent such interest (including Additional Interest thereon) relates to the first two years of the portion of the Deferral Period for which interest has not so been paid.

(l) *Sinking Fund* . The Notes shall not be subject to any sinking fund or similar provisions.

(m) *Forms* . The Notes shall be substantially in the form of Annex A attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same and shall be issued in the form of one or more Global Securities. The Depositary for such Global Securities shall be The Depository Trust Company.

(n) *Subordination* . The subordination provisions of Article 13 of the Indenture shall apply.

(o) *Defeasance* . Section 4.01(1)(B)(ii) and (iii), Section 4.03 and Section 4.04 of the Indenture shall not apply to the Notes.

(p) The Trustee shall be the Paying Agent and Security Registrar for the Notes and the Corporate Trust Office shall be the initial Place of Payment.

ARTICLE 3
R EPAYMENT OF THE N OTES

Section 3.01 . *Repayment.* The Company shall, not more than 30 and not less than 15 days prior to each Repayment Date, notify the Trustee of the principal amount of Notes to be repaid on such date pursuant to Section 2.01(d), which notice shall have attached thereto the Notice of Repayment, which shall be given by the Trustee to the Holders as soon as practicable thereafter. If the Company anticipates that it will repay the Notes in part, and not in full, on any Repayment Date, the Company shall use its commercially reasonable efforts to deliver notice pursuant to this Section 3.01 to the Trustee 30 days prior to such Repayment Date.

Section 3.02 . *Selection of Securities To Be Repaid.* If less than all the Notes are to be repaid on any Repayment Date (unless such repayment affects only a single Note), the particular Notes to be repaid shall be selected not more than 30 days prior to such Repayment Date by the Trustee in accordance with Section 11.03 of the Indenture.

The Trustee shall promptly notify the Company in writing of the Notes selected for partial repayment and the principal amount thereof to be repaid. For all purposes hereof, unless the context otherwise requires, all provisions relating to the repayment of Notes shall relate, in the case of any Note repaid or to be repaid only in part, to the portion of the principal amount of such Note which has been or is to be repaid. If the Company shall so direct, Notes registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the Notes selected for repayment.

Section 3.03 . *Notice of Repayment.* Notice of repayment (each a " **Notice of Repayment** ") shall be given by first-class mail, postage prepaid, mailed not later than the 30th day, and not earlier than the 15th day, prior to the Repayment Date, to each Holder of the Notes to be repaid, at the address of such Holder as it appears in the Security Register; *provided* that additional notices (each a " **Supplemental Notice** ") may be given to the Holders specifying additional details relating to such repayment no later than the 10th day prior to the Repayment Date.

Each Notice of Repayment, to the extent not specified thereafter by any applicable Supplemental Notice, shall identify the Notes to be repaid (including CUSIP number, if a CUSIP number has been assigned to the Notes) and shall state:

(a) the Repayment Date and the price at which the Notes are to be repaid;

(b) if less than all Outstanding Notes are to be repaid, the identification (and, in the case of partial repayment, the respective principal amounts) of the particular Notes to be redeemed;

(c) that on the Repayment Date, the principal amount of the Notes to be repaid shall become due and payable upon each such Note or portion thereof, and that interest thereon shall cease to accrue on and after said date; and

(d) the place or places where such Notes are to be surrendered for payment of the principal amount thereof.

Notice of Repayment shall be given by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Notes designated for repayment as a whole or in part shall not affect the validity of the proceedings for the repayment of any other Notes.

Section 3.04 . *Deposit of Repayment Amount.* Prior to 10:00 a.m. New York City time on the Repayment Date specified in the Notice of Repayment, the Company shall deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company shall segregate and hold in trust as provided in Section 10.03 of the Indenture) an amount of money sufficient to pay the principal amount of, and any accrued interest (including Additional Interest thereon) on, all the Notes which are to be repaid on that date.

Section 3.05 . *Payment of Notes Subject to Repayment.* If any Notice of Repayment has been given, the Notes or portion of the Notes with respect to which such notice has been given, or if any Supplemental Notice is given which

identifies the particular Notes to be redeemed, the Notes or portion thereof so identified, shall become due and payable on the date and at the place or places stated in such notice. On presentation and surrender of such Notes at a Place of Payment in said notice specified, the Notes or the specified portion thereof shall be paid by the Company at their principal amount, together with accrued interest (including any Additional Interest thereon) to the Repayment Date.

Upon presentation of any Note repaid in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in aggregate principal amount equal to the portion of the Note not repaid and so presented and having the same date of original issuance, Stated Maturity and terms.

If any Note called for repayment shall not be so paid upon surrender thereof, the principal of such Note shall, until paid, bear interest from the Repayment Date at the rate prescribed therefore in the Note.

ARTICLE 4
MISCELLANEOUS

Section 4.01 . *Relationship to Trust Indenture Act.* If any provision of this Supplemental Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939 through operation of Section 318(c) thereof, such imposed duties shall control.

Section 4.02 . *Headers.* The Article headings herein are for convenience only and shall not affect the construction hereof.

Section 4.03 . *Successors and Assigns.* All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 4.04 . *Separability.* In case any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 4.05 . *Rules of Construction.* Nothing in this Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this Supplemental Indenture.

Section 4.06 . *Governing Law.* THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 4.07 . *No Representation by Trustee.* The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The recitals and statements herein are deemed to be those of the Company and not of the Trustee and the Trustee makes no representations as to validity or sufficiency of this Supplemental Indenture.

Section 4.08 . *No Consent Required for Amendments to Achieve Consistency.* Notwithstanding anything to the contrary contained in this Supplemental Indenture, the consent of the Holders of the Notes shall not be required to effect any amendment required in order to make this Supplemental Indenture consistent with the description of the Supplemental Indenture contained in the Prospectus, dated November 3, 2006, as supplemented by the Prospectus Supplement, dated November 7, 2006.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

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

GENWORTH FINANCIAL, INC.

By: /s/ Victor C. Moses
Name: Victor C. Moses
Title: Senior Vice President — Chief Actuary and Acting Chief Financial Officer

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

By: /s/ R. Tarnas
Name: R. Tarnas
Title: Vice President

Annex A

[Form of Note]

FACE OF SECURITY

[THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY OR A NOMINEE OF THE DEPOSITORY TRUST COMPANY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY TRUST COMPANY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TRUST COMPANY TO A NOMINEE OF THE DEPOSITORY TRUST COMPANY OR BY A NOMINEE OF THE DEPOSITORY TRUST COMPANY TO THE DEPOSITORY TRUST COMPANY OR ANOTHER NOMINEE OF THE DEPOSITORY TRUST COMPANY.

UNLESS THIS CERTIFICATE 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 CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.] *

GENWORTH FINANCIAL, INC.

6.15% Fixed-to-Floating Rate Junior Subordinated Note due 2066

No. **$**

CUSIP No.

ISIN

GENWORTH FINANCIAL, INC., a corporation organized and existing under the laws of Delaware (hereinafter called the " **Company** ," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay [Cede & Co.]* or its registered assigns, the principal amount of $ on November 15, 2066 (the " **Final**

* Insert for Global Securities only.

Maturity Date "); *provided* that the principal amount of, and all accrued and unpaid interest on, this Security shall be payable in full on November 15, 2036 (the " **Scheduled Redemption Date** ") or any subsequent Interest Payment Date to the extent, and subject to the conditions, set forth in the Supplemental Indenture; *provided further* that, if any date fixed for redemption or repayment is not a Business Day; redemption or repayment of the principal amount will be made on the next day that is a Business Day, without any interest or other payment as a result of such delay.

The Company further promises to pay interest on said principal amount from November 14, 2006 or from the most recent Interest Payment Date for which interest has been paid or duly provided for. This Security shall bear interest (i) from and including November 14, 2006 to but excluding November 15, 2016 at the annual rate of 6.15%, payable, and subject to deferral, in each case as set forth in the Supplemental Indenture, and (ii) from and including November 15, 2016 to but excluding the Final Maturity Date (or if earlier, until the principal hereof is paid in full), at an annual rate equal to Three-month LIBOR plus 2.0025%, payable, and subject to deferral, in each case as set forth in the Supplemental Indenture.

The Company shall have the right, at any time and from time to time prior to the Final Maturity Date to defer the payment of interest on this Security as set forth in, and subject to the conditions specified in, the Supplemental Indenture.

Each Holder, by such Holder's acceptance hereof, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of this Security, such Holder shall only have a claim for, and right to receive, deferred and unpaid interest (including Compounded Amounts thereon) that has not been paid prior to such Bankruptcy Event through the application of the Alternative Payment Mechanism to the extent such interest (including Compounded Amounts thereon) relates to the first two years of the portion of the Deferral Period for which such interest has not been so paid.

The Company may, at its option and subject to the terms and conditions of the Supplemental Indenture and Article 11 of the Indenture, redeem this Security (i) in whole or in part at any time on or after November 15, 2016 at a Redemption Price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the date of redemption as further specified in the Supplemental Indenture, (ii) in whole or in part, prior to November 15, 2016, in cases not involving a Tax Event or Rating Agency Event, at a Redemption Price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the date of redemption or, if greater, a Make-whole Price specified in the Supplemental Indenture, and (iii) in whole but not in part, upon the occurrence of a Tax Event or Rating Agency Event, at a Redemption Price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the date of redemption or, if greater, a Special Event Make-whole Price specified in the Supplemental Indenture.

The Securities are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full of all Senior Indebtedness (as defined in the Indenture). Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, 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.

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

This Security is one of a duly authorized issue of securities of the Company (herein called the " **Securities** "), issued and to be issued in one or more series under an Indenture, dated as of November 14, 2006 (herein called the " **Indenture** ", and such supplemental indenture dated as of November 14, 2006, herein called the " **Supplemental Indenture** "), between the Company and The Bank of New York Trust Company, N.A., as Trustee (herein called the " **Trustee** ," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount of $.

All terms used in this Security that are defined in the Supplemental Indenture or in the Indenture shall have the meanings assigned to them in the Supplemental Indenture or the Indenture, as the case may be.

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

GENWORTH FINANCIAL, INC.

By: _____
Name:
Title:

Dated:

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

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

By: _____
Authorized Signatory

Dated:

REVERSE OF SECURITY

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.02 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

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

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

THE INDENTURE, THE SUPPLEMENTAL INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Exhibit 8.1

November 14, 2006

Genworth Financial, Inc.
6620 West Broad Street
Richmond, VA 23230

Ladies and Gentlemen:

We have acted as special tax counsel to Genworth Financial, Inc. (the "Company") in connection with the registration and filing by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act") of the prospectus supplement, dated November 7, 2006 (the "Prospectus Supplement"), relating to the public offering by the Company of 6.15% fixed-to-floating rate junior subordinated notes due November 15, 2066 (the "Notes"). We hereby confirm to you that, in our opinion, insofar as they purport to describe provisions of United States federal income tax law applicable to the Notes that may be offered pursuant to the Prospectus Supplement, the statements set forth under the caption "United States Federal Income Tax Consequences" in the Prospectus Supplement are accurate in all material respects. In rendering this opinion, we have relied upon certain representations, including those representations contained in a representation certificate of an officer of the Company dated the date hereof. If any of those representations is inaccurate or incomplete in any respect, this opinion may not be relied upon, and the material United States federal income tax consequences of the purchase, ownership and disposition of the Notes might differ from those discussed therein.

We hereby consent to the filing with the Securities and Exchange Commission of this letter as an exhibit and the reference to us under the heading "United States Federal Income Tax Consequences". In giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Weil, Gotshal & Manges LLP

Exhibit 10.1

REPLACEMENT CAPITAL COVENANT, dated as of November 14, 2006 (this " **Replacement Capital Covenant** "), by Genworth Financial, Inc., a Delaware corporation (together with its successors and assigns, the " **Corporation** "), in favor of and for the benefit of each Covered Debtholder (as defined below).

RECITALS

A. On the date hereof, the Corporation is issuing $600,000,000 aggregate principal amount of its 6.15% Fixed-to-Floating Rate Junior Subordinated Notes (the " **Notes** ").

B. This Replacement Capital Covenant is the " **Replacement Capital Covenant** " referred to in the Prospectus Supplement, dated November 7, 2006, relating to the Notes (together with the Prospectus, dated November 3, 2006 attached thereto, the " **Prospectus Supplement** ").

C. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

NOW, THEREFORE, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

Section 1 . *Definitions.* Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

Section 2 . *Limitations on Redemption and Repurchase of Notes.* The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not repay, redeem or repurchase, and will cause its Subsidiaries not to, repay, redeem or repurchase, as applicable, all or any part of the Notes on or before November 15, 2046 except to the extent that the principal amount repaid or the applicable redemption or repurchase price does not exceed the sum of the following amounts:

(i) the Applicable Percentage of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period) from the sale of Common Stock and rights to acquire Common Stock (including Common Stock and rights to acquire Common Stock issued pursuant to the Corporation's reinvestment plan or employee benefit plans) to Persons other than the Corporation and its Subsidiaries; *plus*

(ii) 100% of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period) from the sale of Mandatorily Convertible Preferred Stock and Debt Exchangeable for Equity to Persons other than the Corporation and its Subsidiaries; *plus*

(iii) 100% of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period) from the sale of Qualifying Capital Securities to Persons other than the Corporation and its Subsidiaries.

Section 3 . *Covered Debt.* (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the next Redesignation Date;

(iv) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to this Section 3(b) shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(v) in connection with such identification of a new series of Covered Debt, the Corporation shall give the notice provided for in Section 3(c) within the time frame provided for in such section.

(c) *Notice* . In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (A) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (B) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a current report on Form 8-K under the Exchange Act; (ii) so long as the Corporation is a reporting company under the Exchange Act, the Corporation will include in each annual report filed with the Commission on Form 10-K under the Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such annual report on Form 10-K is filed with the Commission; (iii) if a series of the Corporation's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt pursuant to the procedures set forth in Section 3(b), the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in the Corporation's next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable; (iv) if, and only if, the Corporation ceases to be a reporting company under the Exchange Act, the Corporation shall post on its website the information otherwise required to be included in Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c); and (v) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with a conformed copy of this Replacement Capital Covenant.

Section 4 . *Termination, Amendment and Waiver.* (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest (the " **Termination Date** ") to occur of (i) November 15, 2046, or, if earlier, the date on which the Notes are otherwise redeemed in full, (ii) the date, if any, on which the Holders of a majority by principal amount of the then effective series of Covered Debt consent or agree in

writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder and (iii) the date on which the Corporation ceases to have any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (ii) of the definition of each such term). Moreover, if an event of default under the Indenture resulting in an acceleration of the Notes occurs, the Corporation does not have to comply with this Replacement Capital Covenant. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of at least a majority by principal amount of the then effective series of Covered Debt, *provided* that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then effective series of Covered Debt) if (i) the effect of such amendment or supplement is solely to impose additional restrictions on the types of securities qualifying as Replacement Capital Securities, and an officer of the Corporation has delivered to the Holders of the then effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect, (ii) such amendment or supplement is not adverse to the Covered Debtholders and an officer of the Corporation has delivered to the Holders of the then effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Covered Debtholders or (iii) such amendment or supplement eliminates Common Stock and/or Mandatorily Convertible Preferred Stock (but only to the extent exchangeable for Common Stock) as Replacement Capital Securities if, in the case of this clause (iii), the Corporation has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Corporation's earnings per share as calculated for financial reporting purposes.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

Section 5 . *Miscellaneous.* **(a) This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time to time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt).

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, provided that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Genworth Financial, Inc.
6620 West Broad Street
Richmond, Virginia 23230
Attention: Chief Financial Officer

(d) If the Corporation is obligated to sell Replacement Capital Securities and apply the net proceeds to payments of principal of or interest on any outstanding securities in addition to the Notes, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for such payments shall be applied to the Notes and those other securities having the same scheduled repayment date or scheduled redemption date as the Notes pro rata in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other securities having a later scheduled repayment date or scheduled redemption date until the principal of and all accrued and unpaid interest on the Notes has been paid in full.

IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

GENWORTH FINANCIAL, INC.

By: /s/ Victor C. Moses
Name: Victor C. Moses
Title: Senior Vice President — Chief Actuary and Acting Chief Financial Officer

Schedule I

DEFINITIONS

" **Applicable Percentage** " means the result, expressed as a percentage, of one divided by (a) 0.75 with respect to any repayment, redemption or repurchase on or prior to November 15, 2016, (b) 0.50 with respect to any repayment, redemption or repurchase after November 15, 2016 and on or prior to November 15, 2036 and (c) 0.25 with respect to any repayment, redemption or repurchase after November 15, 2036 and prior to November 15, 2046.

" **Business Day** " means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or, on or after November 15, 2016, a day that is not a London business day. A " **London business day** " is any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

" **Commission** " means the United States Securities and Exchange Commission.

" **Common Stock** " means common stock of the Corporation (including treasury shares of common stock and shares of common stock sold pursuant to the Corporation's dividend reinvestment plan and employee benefit plans).

" **Corporation** " has the meaning specified in the introduction to this instrument.

" **Covered Debt** " means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

" **Covered Debtholder** " means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation during the period that such long-term indebtedness for money borrowed is Covered Debt.

" **Debt Exchangeable for Equity** " means a security (or combination of securities) that:

(i) gives the holder a beneficial interest in (a) debt securities of the Corporation that are Non-Cumulative and that are the most junior subordinated debt of the Corporation (or rank *pari passu* with the most junior subordinated debt of the Corporation) and (b) a fractional interest in a stock purchase contract;

(ii) includes a remarketing feature pursuant to which the subordinated debt of the Corporation is remarketed to new investors commencing within five years from the date of issuance of the security or earlier in the event of an early settlement event based on one or more financial tests set forth in the terms of such securities or related transaction agreements;

(iii) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Non-Cumulative Preferred Stock;

(iv) includes a replacement capital covenant substantially similar to this Replacement Capital Covenant, *provided* that such replacement capital covenant will apply to such security (or combination of securities) and to the Qualifying Non-Cumulative Preferred Stock and will not include Debt Exchangeable for Equity in the definition of Qualifying Capital Securities;

(v) after the issuance of such Qualifying Non-Cumulative Preferred Stock, provides the holder of the security with a beneficial interest in such Qualifying Non-Cumulative Preferred Stock;

(vi) includes a provision granting the Corporation a security interest in the debt securities referred to in clause (i)(a) to secure the holders' obligation to purchase Qualifying Non-Cumulative Preferred Stock; and

(vii) includes a provision defining a failed remarketing and specifying that the consequences of a failed remarketing will be that the Qualifying Non-Cumulative Preferred Stock will be acquired in exchange for the debt securities.

" **Distribution Date** " means, as to any securities or combination of securities, the dates on which periodic Distributions on such securities are scheduled to be made.

" **Distribution Period** " means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but excluding the next succeeding Distribution Date for such securities.

" **Distributions** " means, as to a security or combination of securities, dividends, interest payments or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

" **Eligible Debt** " means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

" **Eligible Senior Debt** " means, at any time in respect of any issuer, each series of outstanding long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding-up of the issuer, ranks most senior among the issuer's then outstanding classes of indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the

issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

" **Eligible Subordinated Debt** " means, at any time in respect of any issuer, each series of the issuer's then-outstanding long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding-up of the issuer, ranks subordinate to the issuer's then outstanding series of indebtedness for money borrowed that ranks most senior, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than $100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

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

" **Holder** " means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

" **Indenture** " means the Indenture, dated as of November 14, 2006, between the Corporation and The Bank of New York Trust Company, N.A., as Trustee, as supplemented by the Supplemental Indenture.

" **Initial Covered Debt** " means the Corporation's 6.5% Senior Notes due 2034.

" **Intent-Based Replacement Disclosure** " means, as to any security or combination of securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer will redeem or repurchase such securities only with the proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or repurchase that are as or more equity-like than the securities then being redeemed or repurchased, raised within 180 days prior to the applicable redemption or repurchase date.

" **Mandatorily Convertible Preferred Stock** " means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

" **Mandatory Trigger Provision** " means as to any security or combination of securities (together in this definition, "securities"), provisions in the terms thereof or of the related transaction agreements that (A) require, or at its option in the case of non-cumulative perpetual preferred stock permit, the issuer of such securities to make payment of Distributions on such securities only pursuant to the issuance and sale of Common Stock, rights to purchase Common Stock or Qualifying Non-Cumulative Preferred Stock, within two years of a failure by the Corporation to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in an amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, provided that the amount of Qualifying Non-Cumulative Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed 25% of the liquidation or principal amount of such securities, (B) if the Corporation issues any securities other than Qualifying Non-Cumulative Preferred Stock as contemplated in (A) above, prohibit the Corporation from repurchasing any Common Stock prior to the date six months after the issuer applies the net proceeds of the sales described in clause (A) to pay such unpaid Distributions in full and (C) upon any liquidation, dissolution, winding-up, reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the Corporation, limit the claim of the holders of such securities (other than non-cumulative perpetual preferred stock) for Distributions that accumulate during a period in which the Corporation fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements to (x) 25% of the principal amount of such securities then outstanding in the case of securities not permitting the issuance and sale pursuant to the provisions described in clause (A) above of securities other than Common Stock

or rights to acquire Common Stock or (y) two years of accumulated and unpaid Distributions (including compounded amounts thereon) in all other cases. No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision or as a result of the issuer's exercise of its right under an Optional Deferral Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

" **Market Disruption Events** " means one or more events or circumstances substantially similar to those listed as "Market Disruption Events" in the Supplemental Indenture.

" **Measurement Date** " means, with respect to any repayment, redemption or repurchase of Notes, the date 180 days prior to delivery of notice of such repayment or redemption or prior to the date of such repurchase.

"Measurement Period" means the period from a Measurement Date to the related notice date or repurchase date.

" **Non-Cumulative** " means, with respect to any securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Securities that include either (i) provisions requiring the Corporation to issue Qualifying Non-Cumulative Preferred Stock and Common Stock or rights to purchase Common Stock and apply the proceeds to pay unpaid Distributions on terms substantially similar to the terms of the alternative payment mechanism described in Section 2.01(h) of the Supplemental Indenture or (ii) a Mandatory Trigger Provision shall also be deemed to be "Non-Cumulative" for all purposes of this Replacement Capital Covenant other than the definition of "Qualifying Non-Cumulative Preferred Stock" and the use of the term under (b) of "Optional Deferral Provision."

" **Notes** " has the meaning specified in Recital A.

" **NRSRO** " means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

" **Optional Deferral Provision** " means, as to any securities, a provision in the terms thereof or of the related transaction agreements to the following effect:

(a) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to 5 years or, if an event substantially similar to a Market Disruption Event is continuing, ten years, without any remedy other than Permitted Remedies and the obligation described in clause (b) below; and

(b) if the issuer of such securities has exhausted its right to defer Distributions and no event substantially similar to a Market Disruption Event is continuing, the issuer will be obligated to issue common stock, rights to purchase common stock and/or Qualifying Non-Cumulative Preferred Stock in an amount such that the net proceeds of such sale equal or exceed the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and to apply the net proceeds of such sale to pay such unpaid Distributions in full.

" **Permitted Remedies** " means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded), and

(b) complete or partial prohibitions preventing the issuer from paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

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

" **Prospectus Supplement** " has the meaning specified in Recital C.

" **Qualifying Capital Securities** " means securities (other than Common Stock, rights to acquire Common Stock and securities convertible into Common Stock, such as Mandatorily Convertible Preferred Stock and Debt Exchangeable for Equity) that, in the determination of the Corporation's Board of Directors, reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) in connection with any redemption, repayment or repurchase of Notes on or prior to November 15, 2016:

(A) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon the liquidation, dissolution or winding-up of the Corporation, (2) have terms that are substantially similar to the terms of the Notes described in the Prospectus Supplement and the attached prospectus and (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or have a Mandatory Trigger Provision, a Ten-Year Optional Deferral Provision and are subject to Intent-Based Replacement Disclosure;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon the liquidation, dissolution or winding-up of the Corporation, (2) are Non-Cumulative, (3) have no maturity or a maturity of at least 50 years and (4) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure; or

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* or junior to other preferred stock of the issuer, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant and (4) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision; or

(ii) in connection with any repayment, redemption or repurchase of Notes after November 15, 2016 and on or prior to November 15, 2036:

(A) all securities described under clause (i) of this definition;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have an Optional Deferral Provision or a Ten-Year Optional Deferral Provision, (3) have no maturity or a maturity of at least 50 years and (4) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) are Non-Cumulative and (3) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure;

(D) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) are Non-Cumulative, (3) have no maturity or a maturity of at least 40 years and (4) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure;

(E) securities issued by the Corporation or its Subsidiaries that (1) would rank junior to all of the senior and subordinated debt of the Corporation other than the Notes, (2) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision and (3) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure;

(F) cumulative preferred stock issued by the Corporation or its Subsidiaries that (1) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (2) (a) has no maturity or a maturity of at least 50 years and (b) is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant; or

(G) other securities issued by the Corporation or its Subsidiaries that (1) rank upon a liquidation, dissolution or winding-up of the Corporation either (a) *pari passu* with or junior to the Notes or (b) *pari passu* with the claims of the Corporation's trade creditors and junior to all of the Corporation's long-term indebtedness for money borrowed (other than the Corporation's long-term indebtedness for money borrowed from time to time outstanding that by its terms ranks *pari passu* with such securities on a liquidation, dissolution or winding-up of the Corporation), and (2) either (a) have no maturity or a maturity of at least 40 years, are subject to Intent-Based Replacement Disclosure and have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision or (b) have no maturity or a maturity of at least 25 years, are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant and have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision; or

(iii) in connection with any repayment, redemption or repurchase of Notes after November 15, 2036, and on or prior to November 15, 2046:

(A) all securities described under clauses (i) or (ii) of this definition;

(B) preferred stock issued by the Corporation that (1) has no maturity or a maturity of at least 50 years and is subject to Intent-Based Replacement Disclosure and (2) has an Optional Deferral Provision or a Ten-Year Optional Deferral Provision;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) either (a) have no maturity or a maturity of at least 50 years and are subject to Intent-Based Replacement Disclosure or (b) have no maturity or a maturity of at least 30 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant and (3) have an Optional Deferral Provision or a Ten-Year Optional Deferral Provision;

(D) securities issued by the Corporation or its Subsidiaries that (1) would rank junior to all of the senior and subordinated debt of the Corporation other than the Notes, (2) have a Mandatory Trigger Provision and a Ten-Year Optional Deferral Provision and (3) have no maturity or a maturity of at least 30 years and are subject to Intent-Based Replacement Disclosure; or

(E) cumulative preferred stock issued by the Corporation or its Subsidiaries that either (1) has no maturity or a maturity of at least 50 years and is subject to Intent-Based Replacement Disclosure or (2) has a maturity of at least 40 years and is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant.

" **Qualifying Non-Cumulative Preferred Stock** " means non-cumulative perpetual preferred stock of the Corporation or its Subsidiaries that ranks *pari passu* with or junior to other preferred stock of the issuer, and, for purposes of clause (a) of the definition of Mandatory Trigger Provision, contains no remedies other than Permitted Remedies and is either subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or has a Mandatory Trigger Provision and is subject to Intent-Based Replacement Disclosure.

" **Redesignation Date** " means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than $100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

" **Replacement Capital Covenant** " has the meaning specified in the introduction to this instrument.

" **Replacement Capital Securities** " means,

(i) Common Stock and rights to acquire Common Stock (including Common Stock and rights to acquire Common Stock issued pursuant to the Corporation's reinvestment plan or employee benefit plans);

(ii) Mandatorily Convertible Preferred Stock;

(iii) Debt Exchangeable for Equity; and

(iv) Qualifying Capital Securities.

“ **Supplemental Indenture** ” means the Supplemental Indenture, dated as of November 14, 2006, between the Corporation and The Bank of New York Trust Company, N.A., as Trustee.

“ **Subsidiary** ” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

“ **Ten-Year Optional Deferral Provision** ” means, as to any securities, a provision in the terms thereof or of the related transaction agreements to the effect that the issuer of such securities thereof may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

“ **Termination Date** ” has the meaning specified in Section 4(a).