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

FORM S-3
REGISTRATION STATEMENT
Under
The Securities Act of 1933

Facebook, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-1665019
(I.R.S. Employer
Identification No.)

Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
(650) 543-4800

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

David M. Wehner
Chief Financial Officer
Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
(650) 543-4800

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

Please send copies of all communications to:

Jeffrey R. Vetter, Esq.
James D. Evans, Esq.
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041
(650) 988-8500

Colin S. Stretch, Esq.
David W. Kling, Esq.
Michael L. Johnson, Esq.
Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
(650) 543-4800

Approximate date of commencement of proposed sale to the public:

From time to time after the effective date of this Registration Statement.

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

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☒

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer☒

Accelerated filer☐

Non-accelerated filer☐

(Do not check if a smaller reporting company)

Smaller reporting company☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(1)
Class A Common Stock, \$0.000006 par value	—	—	—	—
Preferred Stock, \$0.000006 par value	—	—	—	—
Debt Securities	—	—	—	—
Warrants	—	—	—	—
Total(2)	—	—	—	—

- (1) An indeterminate aggregate initial offering price and number of the securities of each class is being registered as may from time to time be offered at indeterminate prices or be issued on exercise, conversion, or exchange of other securities. Separate consideration may or may not be received for securities that are issuable on exercise, conversion, or exchange of other securities. In accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, as amended, the Registrant is deferring payment of the registration fee. Any registration fee will be paid subsequently on a pay-as-you-go basis in accordance with Rule 457(r).
- (2) The securities registered hereunder may be sold separately or in a combination with other securities registered hereby.

PROSPECTUS



**Class A Common Stock
Preferred Stock
Debt Securities
Warrants**

We may offer from time to time Class A common stock, preferred stock, debt securities, or warrants in one or more offerings. Certain of these securities may be convertible into or exercisable or exchangeable for Class A common stock, preferred stock, or other securities. When we decide to sell a particular type of securities, we will provide specific terms of the offered securities, including the amount of securities offered, in a prospectus supplement. This prospectus and any accompanying prospectus supplement may be used to offer securities for the account of persons other than us, including selling securityholders. We or any selling securityholders may offer and sell these securities to or through one or more underwriters, brokers, dealers, agents, or directly to purchasers, on a continuous or delayed basis. Unless the applicable prospectus supplement provides otherwise, we will not receive any proceeds from the sale of securities by the selling securityholders.

You should read this prospectus and any prospectus supplement carefully before you invest. Neither we nor any selling securityholders may use this prospectus to sell securities unless it includes a prospectus supplement.

We have two classes of common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except voting and conversion rights. Each share of Class A common stock is entitled to one vote. Each share of Class B common stock is entitled to ten votes and is convertible at any time into one share of Class A common stock.

Our Class A common stock is listed on the NASDAQ Global Select Market under the symbol "FB."

Investing in our securities involves risks. See "Risk Factors" beginning on page 2.

The Securities and Exchange Commission and state regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

October 29, 2014

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We are responsible for the information contained and incorporated by reference in this prospectus, in any accompanying prospectus supplement, and in any related free writing prospectus we prepare or authorize. We have not authorized anyone to give you any other information, and we take no responsibility for any other information that others may give you. If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered by this document are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this document does not extend to you. The information appearing or incorporated by reference in this prospectus, any accompanying prospectus supplement, and any related free writing prospectus, is accurate only as of the date thereof, regardless of the time of delivery of this prospectus, any accompanying prospectus supplement, or any related free writing prospectus, or of any sale of our securities. Our business, financial condition, and results of operations may have changed since those dates. It is important for you to read and consider all the information contained in this prospectus and in any accompanying prospectus supplement, including the documents incorporated by reference herein or therein, in making your investment decision.

ABOUT THIS PROSPECTUS

This prospectus is part of an automatic shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission (SEC) as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended (Securities Act) . We and certain securityholders may sell Class A common stock, preferred stock, debt securities, or warrants described in this prospectus in one or more offerings. There is no limit on the aggregate amount of the securities we or selling securityholders may offer pursuant to the registration statement of which this prospectus is a part. This prospectus provides you with a general description of the securities we or selling securityholders may offer. Each time we or selling securityholders offer securities, we will provide a prospectus supplement that will describe the amounts, prices, and terms of the offered securities. The prospectus supplement may also add, update, or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and any applicable prospectus supplement, you should rely on the information in the applicable prospectus supplement. You should carefully read this prospectus, any prospectus supplement, information incorporated by reference, and any related free writing prospectus.

The registration statement of which this prospectus is a part, including the exhibits to the registration statement, provides additional information about us and the securities. Wherever references are made in this prospectus to information that will be included in a prospectus supplement, to the extent permitted by applicable law, rules, or regulations, we may instead include such information or add, update, or change the information contained in this prospectus by means of a post-effective amendment to the registration statement of which this prospectus is a part, through filings we make with the SEC that are incorporated by reference into this prospectus, or by any other method as may then be permitted under applicable law, rules, or regulations. The registration statement, including the exhibits to the registration statement and any post-effective amendment thereto, can be obtained from the SEC, as described under the heading “ Where You Can Find Additional Information .”

FACEBOOK, INC.

Our mission is to give people the power to share and make the world more open and connected.

We were incorporated in Delaware in July 2004. Unless expressly indicated or the context requires otherwise, the terms “Facebook,” “company,” “we,” “us,” and “our” in this prospectus, in any accompanying prospectus supplement, or the documents incorporated by reference refer to Facebook, Inc., a Delaware corporation, and, where appropriate, its wholly-owned subsidiaries. The term “Facebook” may also refer to our products, regardless of the manner in which they are accessed. Our principal executive offices are located at 1601 Willow Road, Menlo Park, California 94025, and our telephone number is (650) 543-4800. Our website address is www.facebook.com. The information on or that can be accessed through our website is not part of this prospectus.

Facebook, the Facebook logo, FB, the Like button, Instagram, WhatsApp, Oculus VR, and our other registered or common law trademarks, service marks, or trade names appearing in this prospectus are the property of Facebook, Inc. Other trademarks, service marks, or trade names appearing in this prospectus or the documents incorporated by reference are the property of their respective owners.

RISK FACTORS

Investing in our securities involves a high degree of risk. Before making a decision to invest in our securities, in addition to the other information contained in this prospectus, in any accompanying prospectus supplement, or incorporated by reference herein or therein, you should carefully consider the risks described under “Risk Factors” contained in the applicable prospectus supplement and any related free writing prospectus, and discussed under “Risk Factors” contained in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus, the documents incorporated by reference, and any free writing prospectus that we may authorize for use in connection with a specific offering. See “Where You Can Find Additional Information.”

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and any prospectus supplement, including the documents incorporated by reference herein and therein, contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in or incorporated by reference in this prospectus and any prospectus supplement other than statements of historical fact, including statements regarding our future results of operations and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described in the “Risk Factors” section. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this prospectus and any prospectus supplement may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. Although we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, you are advised to review any additional disclosures we make in the documents we subsequently file with the SEC that are incorporated by reference in this prospectus and any prospectus supplement. See “Where You Can Find Additional Information.”

RATIO OF EARNINGS TO FIXED CHARGES

Our ratio of earnings to fixed charges for each of the five years in the period ended December 31, 2013 and for the six months ended June 30, 2014 is set forth below. For purposes of computing the ratio of earnings to fixed charges, earnings consists of income before provision for income taxes plus fixed charges (excluding capitalized interest) Fixed charges represent interest expense, capitalized interest and a portion of rental expense that represents interest factor.

We did not have any shares of preferred stock outstanding as of December 31, 2013 and June 30, 2014, and did not declare and were not otherwise required to pay any dividends on preferred stock during the periods noted in the table below. Accordingly, our ratio of earnings to combined fixed charges and preferred dividends for any given period is equivalent to our ratio of earnings to fixed charges.

	Six Months Ended June 30, 2014	Year Ended December 31,				
		2013	2012	2011	2010	2009
Ratio of earnings to fixed charges	77.88	28.81	5.84	19.02	17.78	10.41

USE OF PROCEEDS

We intend to use the net proceeds to us from the sale of the securities offered hereby for working capital and other general corporate purposes; however, we do not currently have any specific uses of the net proceeds planned. Additionally, we may use a portion of the proceeds to us for acquisitions of complementary businesses, technologies, or other assets. Pending other uses, we intend to invest the proceeds to us in investment-grade, interest-bearing securities such as money market funds, certificates of deposit, or direct or guaranteed obligations of the U.S. government, or hold as cash. We cannot predict whether the proceeds invested will yield a favorable return. Our management will have broad discretion in the application of the net proceeds we receive from the sale of the securities offered hereby, and investors will be relying on the judgment of our management regarding the application of the net proceeds.

Unless the applicable prospectus supplement provides otherwise, we will not receive any of the proceeds from the sale of our securities by selling securityholders.

DESCRIPTION OF SECURITIES

Our Class A common stock, preferred stock, debt securities, or warrants may be offered under this prospectus. When we or any selling securityholder decides to sell a particular class of securities, we will set forth in a prospectus supplement a description of the securities that may be offered under this prospectus. The terms of the securities offering, including the initial offering price and the net proceeds to us, will be set forth in the prospectus supplement, or in other filings we make with the SEC under the Securities Exchange Act of 1934, as amended (Exchange Act), which are incorporated by reference.

SELLING SECURITYHOLDERS

Information about selling securityholders, if any, will be set forth in a prospectus supplement.

PLAN OF DISTRIBUTION

We or any selling securityholders may offer and sell the securities being offered hereby in one or more of the following ways from time to time:

- to or through underwriters;
- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- broker-dealers may agree with a selling securityholder to sell a specified number of securities at a stipulated price per security;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

We will identify the specific plan of distribution, including any underwriters, dealers, agents, or other purchasers, persons, or entities and any applicable compensation, in a prospectus supplement, in an amendment to the registration statement of which this prospectus is a part, or in other filings we make with the SEC under the Exchange Act, which are incorporated by reference.

LEGAL MATTERS

Unless otherwise stated in an accompanying prospectus supplement, Fenwick & West LLP, Mountain View, California, will provide us with an opinion as to the legality of the securities offered under this prospectus. Counsel representing any underwriters, dealers, agents, or selling securityholders will be named in the applicable prospectus supplement.

As of the date of this prospectus, attorneys of Fenwick & West LLP beneficially own an aggregate of approximately 11,000 shares of our capital stock.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2013 as set forth in their report therein, which is incorporated by reference in this prospectus and elsewhere in the registration statement. Our consolidated financial statements are incorporated by reference in reliance on Ernst & Young LLP's report, given their authority as experts in accounting and auditing.

Ernst & Young LLP, independent auditors, has audited the financial statements of WhatsApp for the years ended December 31, 2013 and 2012, included in our Current Report on Form 8-K/A dated October 28, 2014, as set forth in their report therein, which is incorporated by reference in this prospectus and elsewhere in the registration statement. The financial statements of WhatsApp are incorporated by reference in reliance on Ernst & Young LLP's report, given their authority as experts in accounting and auditing.

INFORMATION INCORPORATED BY REFERENCE

The following documents filed with the SEC are hereby incorporated by reference in this prospectus:

- our Annual Report on Form 10-K for the year ended December 31, 2013, filed with the SEC on January 31, 2014, including portions of our proxy statement from our 2014 Annual Meeting of Stockholders held on May 22, 2014 to the extent incorporated by reference into our Annual Report on Form 10-K;
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2014 and June 30, 2014, filed with the SEC on April 25, 2014 and July 24, 2014, respectively;
- our Current Reports on Form 8-K filed with the SEC on February 19, 2014, March 26, 2014, April 23, 2014 (but only the portion disclosed pursuant to Item 5.02), May 23, 2014, and October 6, 2014 (as amended on October 28, 2014); and
- the description of our Class A common stock as set forth in our registration statement on Form 8-A, filed with the SEC on May 14, 2012, pursuant to Section 12(b) of the Exchange Act, including any subsequent amendments or reports filed for the purpose of updating such description.

All reports and other documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of the securities hereunder shall be deemed to be incorporated by reference in this prospectus and to be part hereof from the date of filing of such reports and other documents.

Notwithstanding the statements in the preceding paragraphs, no document, report, or exhibit (or portion of any of the foregoing) or any other information that we have "furnished" or may in the future "furnish" to the SEC pursuant to the Exchange Act shall be incorporated by reference into this prospectus.

We hereby undertake to provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon request of any such person, a copy of any and all of the information that has been or may be incorporated by reference in this prospectus, other than exhibits to such documents, unless such exhibits have been specifically incorporated by reference thereto. Requests for such copies should be directed to our Investor Relations department, at the following address:

Facebook, Inc.
Investor Relations
1601 Willow Road
Menlo Park, California 94025

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We file annual, quarterly, and special reports and other information with the SEC. You may read and copy and documents we file at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains an Internet web site that contains reports, proxy, and information statements and other information regarding registrants like us that file electronically with the SEC. The address of the site is www.sec.gov.

Our Internet address is www.facebook.com and our investor relations website is located at <http://investor.fb.com>. We make available free of charge, on or through our investor relations website, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

You should rely only on the information contained or incorporated by reference in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus or any prospectus supplement. The securities offered under this prospectus or any prospectus supplement are offered only in jurisdictions where offers and sales are permitted. The information contained in this prospectus and any prospectus supplement is accurate only as of the date of this prospectus or the prospectus supplement, as the case may be, regardless of the time of delivery of this prospectus, a prospectus supplement, or any sale of the securities.

This prospectus constitutes a part of a registration statement we filed with the SEC under the Securities Act. This prospectus does not contain all of the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the offerings made under this prospectus, reference is hereby made to the registration statement. The registration statement may be inspected at the public reference facilities maintained by the SEC at the addresses set forth above. Statements contained herein concerning any document filed as an exhibit are not necessarily complete, and, in each instance, reference is made to the copy of such document filed as an exhibit to the registration statement. Each such statement is qualified in its entirety by such reference.



**Class A Common Stock
Preferred Stock
Debt Securities
Warrants**

PROSPECTUS

October 29, 2014

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. *Other Expenses of Issuance and Distribution*

The following table sets forth the estimated costs and expenses payable by us in connection with the offering of the securities being registered. All amounts shown are estimates, except for the registration fee of the Securities and Exchange Commission (SEC), the filing fee of the Financial Industry Regulatory Authority, Inc. (FINRA), and the NASDAQ Global Select Market listing fee.

SEC registration fee	\$	*
FINRA fees		**
NASDAQ Global Select Market listing fee		**
Accounting fees and expenses		**
Legal fees and expenses		**
Printing and engraving		**
Transfer agent and registrar fees		**
Trustee fees		**
Blue sky fees and expenses (including legal fees)		**
Miscellaneous		**
Total		\$ **

* In accordance with Rules 456(b) and 457(r) of the Securities Act of 1933, as amended (Securities Act), we are deferring payment of the registration fee for the securities offered.

** The amount of securities and number of offerings are indeterminable and the expenses cannot be estimated at this time. An estimate of the aggregate expenses in connection with the sale and distribution of securities being offered will be included in any applicable prospectus supplement.

ITEM 15. *Indemnification of Directors and Officers*

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director's duty of loyalty to the Registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

- under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that:

- the Registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;
- the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;
- the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and
- the rights conferred in the bylaws are not exclusive.

The Registrant has entered into separate indemnification agreements with its directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws, and the indemnification agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant currently carries liability insurance for its directors and officers.

ITEM 16. Exhibits and Financial Statement Schedules

Exhibit Number	Description of Exhibit	Incorporated by reference herein		Filed herewith
		From	Date	
1.1*	Form of Underwriting Agreement.			
2.1	Agreement and Plan of Merger and Reorganization, dated as of February 19, 2014, among the Registrant, Rhodium Acquisition Sub II, Inc., Rhodium Merger Sub, Inc., WhatsApp Inc., and Fortis Advisors LLC.	Quarterly Report on Form 10-Q (File No. 001-35551)	April 25, 2014	
4.1	Restated Certificate of Incorporation.	Quarterly Report on Form 10-Q (File No. 001-35551)	July 31, 2012	
4.2	Amended and Restated Bylaws.	Quarterly Report on Form 10-Q (File No. 001-35551)	July 31, 2012	
4.3	Sixth Amended and Restated Investors' Rights Agreement dated December 27, 2010.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.4	Amendment No. 1 to Sixth Amended and Restated Investors' Rights Agreement.	Registration Statement on Form S-1, as amended (File No. 333-179287)	May 3, 2012	
4.5	Form of Class A common stock certificate.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.6	Form of Class B common stock certificate.	Registration Statement on Form S-8 (File No. 333-181566)	May 21, 2012	
4.7*	Form of Specimen Preferred Stock Certificate.			
4.8	Form of "Type 1" Holder Voting Agreement, between Registrant, Mark Zuckerberg, and certain parties thereto.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.9	Registration Rights Agreement dated October 6, 2014.			X
4.10*	Form of Warrant Agreement (including form of warrant certificate).			
4.11	Form of Debt Indenture.			X
4.12	Form of Debt Securities (included in Exhibit 4.11).			X
5.1	Opinion of Fenwick & West LLP.			X
12.1	Computation of Ratio of Earnings to Fixed Charges.			X
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.			X
23.2	Consent of Ernst & Young LLP, Independent Auditors.			X
23.3	Consent of Fenwick & West LLP (included in Exhibit 5.1).			X
24.1	Power of Attorney (incorporated by reference to the signature page of this Registration Statement).			X
25.1**	Form T-1 Statement of Eligibility of Trustee under Debt Indenture.			

* To be filed by amendment or as an exhibit to a current report on Form 8-K and incorporated herein by reference, if applicable.

** To be filed in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939, as amended, and the applicable rules thereunder.

ITEM 17. *Undertakings*

(a) The undersigned Registrant hereby undertakes:

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

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

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act, that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

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

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

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

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

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

(d) That, for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(e) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the SEC under

Section 305(b)(2) of the Trust Indenture Act.

(f) To supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Menlo Park, State of California, on October 29, 2014 .

FACEBOOK, INC.

By: /s/ David M. Wehner
David M. Wehner
Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Mark Zuckerberg, David M. Wehner, and Colin S. Stretch, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement on Form S-3 has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
<u>/ s / MARK ZUCKERBERG</u> Mark Zuckerberg	Chairman and Chief Executive Officer (Principal Executive Officer)	October 29, 2014
<u>/ s / D AVID M. WEHNER</u> David M. Wehner	Chief Financial Officer (Principal Financial Officer)	October 29, 2014
<u>/ s / JAS ATHWAL</u> Jas Athwal	Chief Accounting Officer (Principal Accounting Officer)	October 29, 2014
<u>/s/ MARC L. ANDREESSEN</u> Marc L. Andreessen	Director	October 23, 2014
<u>/s/ ERSKINE B. BOWLES</u> Erskine B. Bowles	Director	October 24, 2014
<u>/s/ SUSAN D. DESMOND-HELLMANN</u> Susan D. Desmond-Hellmann	Director	October 29, 2014
<u>/s/ JAN KOUM</u> Jan Koum	Director	October 29, 2014
<u>/s/ DONALD E. GRAHAM</u> Donald E. Graham	Director	October 23, 2014
<u>/s/ REED HASTINGS</u> Reed Hastings	Director	October 25, 2014
<u>/s/ SHERYL K. SANDBERG</u> Sheryl K. Sandberg	Director	October 29, 2014
<u>/s/ PETER A. THIEL</u> Peter A. Thiel	Director	October 23, 2014

EXHIBIT INDEX

Exhibit Number	Description of Exhibit	Incorporated by reference herein		Filed herewith
		From	Date	
1.1*	Form of Underwriting Agreement.			
2.1	Agreement and Plan of Merger and Reorganization, dated as of February 19, 2014, among the Registrant, Rhodium Acquisition Sub II, Inc., Rhodium Merger Sub, Inc., WhatsApp Inc., and Fortis Advisors LLC.	Quarterly Report on Form 10-Q (File No. 001-35551)	April 25, 2014	
4.1	Restated Certificate of Incorporation.	Quarterly Report on Form 10-Q (File No. 001-35551)	July 31, 2012	
4.2	Amended and Restated Bylaws.	Quarterly Report on Form 10-Q (File No. 001-35551)	July 31, 2012	
4.3	Sixth Amended and Restated Investors' Rights Agreement dated December 27, 2010.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.4	Amendment No. 1 to Sixth Amended and Restated Investors' Rights Agreement.	Registration Statement on Form S-1, as amended (File No. 333-179287)	May 3, 2012	
4.5	Form of Class A common stock certificate.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.6	Form of Class B common stock certificate.	Registration Statement on Form S-8 (File No. 333-181566)	May 21, 2012	
4.7*	Form of Specimen Preferred Stock Certificate.			
4.8	Form of "Type 1" Holder Voting Agreement, between Registrant, Mark Zuckerberg, and certain parties thereto.	Registration Statement on Form S-1, as amended (File No. 333-179287)	February 8, 2012	
4.9	Registration Rights Agreement dated October 6, 2014.			X
4.10*	Form of Warrant Agreement (including form of warrant certificate).			
4.11	Form of Debt Indenture.			X
4.12	Form of Debt Securities (included in Exhibit 4.11).			X
5.1	Opinion of Fenwick & West LLP.			X
12.1	Computation of Ratio of Earnings to Fixed Charges.			X
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.			X
23.2	Consent of Ernst & Young LLP, Independent Auditors.			X
23.3	Consent of Fenwick & West LLP (included in Exhibit 5.1).			X
24.1	Power of Attorney (incorporated by reference to the signature page of this Registration Statement).			X
25.1**	Form T-1 Statement of Eligibility of Trustee under Debt Indenture.			

* To be filed by amendment or as an exhibit to a current report on Form 8-K and incorporated herein by reference, if applicable.

** To be filed in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939, as amended, and the applicable rules thereunder.

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “**Agreement**”) is made and entered into as of October 6, 2014 by and between Facebook, Inc., a Delaware corporation (“**Parent**”), and the individuals and entities listed on Exhibit A attached hereto (each a “**Holder**” and collectively the “**Holders**”).

RECITALS

A. This Agreement is being entered into pursuant to, and in connection with the transactions contemplated by, that certain Agreement and Plan of Merger and Reorganization dated as of February 19, 2014 (the “**Merger Agreement**”) by and between Parent, Rhodium Acquisition Sub II, Inc., a Delaware corporation and a wholly owned (in part directly and in part indirectly) subsidiary of Parent (“**Acquirer**”), Rhodium Merger Sub, Inc., a Delaware corporation and a direct wholly owned subsidiary of Acquirer (“**Merger Sub**”), WhatsApp Inc., a Delaware corporation (the “**Company**”), and Fortis Advisors LLC, a Delaware limited liability company, as the stockholders’ agent (the “**Stockholders’ Agent**”).

B. The Merger Agreement provides that, subject to the terms and conditions of the Merger Agreement, (i) Merger Sub will merge with and into the Company (the “**First Merger**”), with the Company continuing as the surviving corporation of the First Merger (also referred to herein as the “**First Step Surviving Corporation**”), (ii) upon consummation of the First Merger, Merger Sub will cease to exist, and the First Surviving Corporation will become a wholly owned subsidiary of Acquirer, (iii) following the consummation of the First Merger, the First Step Surviving Corporation will merge with and into the Acquirer (the “**Second Merger**” and together or *in seriatim* with the First Merger, as appropriate, the “**Mergers**”), and (iv) upon consummation of the Second Merger, the First Step Surviving Corporation will cease to exist, and Acquirer will continue to exist as a wholly owned (in part directly and in part indirectly) subsidiary of Parent.

C. Pursuant to the Mergers, among other things, the issued and outstanding Company Capital Stock shall be converted into the right to receive shares of Parent Common Stock and cash in the manner set forth in the Merger Agreement.

D. As an inducement for Company to enter into the Merger Agreement, Parent agreed to grant the registration rights to the Holders as contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Definitions and References.

Unless otherwise defined herein, the capitalized terms in this Agreement have the same meanings given to them in the Merger Agreement. For purposes of this Agreement, in addition to the definitions set forth elsewhere herein, the following terms shall have the following respective meanings:

“ **Applicable Securities Law** ” means the securities laws of the United States, including without limitation the Exchange Act and the Securities Act and any applicable securities law of any State of the United States (and any rules or regulations promulgated thereunder), in each case as may be in effect from time to time.

“ **Blackout Period** ” means the periods set forth from time to time in Parent’s insider trading policy during which senior executives of Parent are unable to trade in Parent’s securities (the “ **Policy** ”), including, but not limited to: (a) periods during which the Parent suspends trading in its securities from time to time because of material developments known to Parent or certain persons within Parent and not yet disclosed to the public (each, a “ **Specified Blackout Period** ”) and (b) the period that currently commences on the twenty-sixth (26th) day of the middle month of any fiscal quarter of Parent and ending at the close of business one (1) full trading day after the public release of earnings data by Parent for such fiscal quarter; any change to the Policy shall be notified to the Holders in writing reasonably promptly thereafter (it being understood that prior to receipt of such notice, the Holders may operate hereunder as if the prior Policy remained in effect).

“ **Register** ,” “ **registered** ” and “ **registration** ” shall refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document by the SEC.

“ **Registrable Stock** ” shall mean (a) the Parent Common Stock issued to a Holder pursuant to the Merger Agreement; and (b) any Parent Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, option or other convertible security which is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, such Parent Common Stock. For purposes of this Agreement, any Registrable Stock shall cease to be Registrable Stock when (a) a Registration Statement covering such Registrable Stock has been declared effective and such Registrable Stock has been disposed of pursuant to such effective Registration Statement, or (b) such Registrable Stock is sold by a person in a transaction that is exempt from registration pursuant to Rule 144 promulgated under the Securities Act (“ **Rule 144** ”) or a transaction in which the Holders’ rights under this Agreement are not assigned.

2. **Registration.**

(a) On the later of the date immediately following (a) the Closing Date, and (b) the date on which the Required Company Financials are made available to Parent by the Company, Parent shall file with the SEC a registration statement for the public resale by the Holders of the Registrable Stock on a continuous or delayed basis pursuant to Rule 415 under the Securities Act, in respect of which Parent may use a Form S-3 registration statement (or any successor short form registration statement available for such resale that permits incorporation by reference at least to the same extent as such form) (“ **Form S-3** ”) to the extent Parent is then eligible for its use (the “ **Registration Statement** ”), and cause the Registration Statement to become automatically effective upon filing if eligible to do so; provided, however, that the Holders acknowledge and agree that the Registration Statement may not be used for the resale of Registrable Stock unless and until the Required Company Financials are included within the prospectus for the Registration Statement (including by incorporation by reference), and provided, further, that no filing of such Registration Statement shall be required during any Blackout Period. The plan of distribution indicated in the

Registration Statement will include all such transactions as the Holders may reasonably request in writing prior to the filing of the Registration Statement and that can be included in the Registration Statement under the rules and regulations of the SEC. Parent shall use its commercially reasonable efforts to keep the Registration Statement continuously effective under the Securities Act during the term of this Agreement.

(b) Each Holder hereby agrees with the Parent and each other such Holder that no holder of Registrable Securities may participate in any underwritten offering hereunder unless (a) Parent gives its prior written consent to such underwritten offering, (b) the managing underwriter and underwriters thereof shall be designated by Parent. Parent shall have the sole right to determine whether to engage underwriters or placement agents in any offering pursuant to the Registration Statement and, if so determined, shall have the sole right to select the underwriters or placement agent, if any, including any managing underwriter engaged in connection with the Registration Statement, and shall make all determinations related to any underwriter compensation (including fees, discount, commissions or incentive payments) and role in the underwriting syndicate.

(c) Notwithstanding anything to the contrary contained in this Section 2 or any other provision in this Agreement, Parent may (i) delay the filing of the Registration Statement, (ii) defer preparing and furnishing any supplement or amendment to a prospectus, (iii) suspend the use of the Registration Statement or any prospectus, or (iv) not take any actions required by Sections 2 and 3 hereof, to the extent relating to each of foregoing clauses “(i)” through “(iii),” (each of the foregoing clauses “(i)” through “(iv)”, “**Deferral Actions**”) if Parent determines, in its reasonable and good faith judgment, that such filing, supplement or amendment or the offering or sale of any Registrable Stock thereunder would (A) occur during any Blackout Period or otherwise violate the Policy, or (B) render Parent unable to comply with the disclosure requirements of Applicable Securities Laws (a Deferral Action based on the matters described in this clause “(B)” being referred to as a “**Securities Law Compliance Deferral Action**”); *provided however* that prior to taking any Securities Law Compliance Deferral Action, Parent shall provide the Holders with written notice of such delay, deferral or suspension (the “**Deferral Notice**”), which notice shall specify the general nature of the event giving rise to such Deferral Action; *provided, further*, that with respect to the matters described in the foregoing clauses (A) (as to any Specified Blackout Period) and (B), Parent shall not register any securities for its own account or that of any other shareholder during such deferral period other than pursuant to a registration (x) relating to the sale of securities to employees of Parent or a subsidiary pursuant to a stock option, stock purchase, or similar plan, or (y) relating to a bona fide significant acquisition, corporate reorganization, financing or similar corporate transaction involving Parent that provided the grounds for such Deferral Notice (meaning the primary issuance in such transaction and not a secondary re-sale incident to such transaction) and Parent shall likewise suspend the usage of all other then-effective resale registration statements and prospectuses (if any) for a period no shorter than the period that the Registration Statement is subject to a Deferral Action. In furtherance of the foregoing, Parent and its transfer agent and registrar are hereby authorized to decline to make any transfer of Registrable Securities if such transfer would constitute a violation or breach of this Agreement or the Policy. Each Holder shall keep confidential any communications received by it from Parent regarding any such Deferral Action, except as required by Applicable Law. Following receipt of a Deferral Notice, the Holders shall not make

any further sales of Registrable Stock pursuant to the Registration Statement until the Holders receive such notice, and any such amendment or supplement, from Parent.

(d) Parent shall provide the Holders with written notice of any Specified Blackout Period (the “*Specified Blackout Notice*”), which notice shall specify the effective date of the commencement of the Specified Blackout Period. Each Holder shall keep confidential any communications received by it from Parent regarding the Specified Blackout Period, except as required by Applicable Law. Following receipt of a Specified Blackout Notice, the Holders shall not make any further sales of Registrable Stock pursuant to the Registration Statement until the end of the Specified Blackout Period or other applicable Blackout Period.

3. **Obligations of Parent**. Subject to Section 2(c) hereof, Parent shall:

(a) if the Registration Statement is not automatically effective upon filing, use commercially reasonable efforts to cause such Registration Statement to become effective;

(b) notify each selling Holder, promptly after Parent receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any prospectus forming a part of such Registration Statement has been filed;

(c) after the Registration Statement becomes effective, notify each selling Holder of any request by the SEC that the Parent amend or supplement such registration statement or prospectus;

(d) prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus used in connection therewith as may be reasonably necessary to keep the Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Stock covered by the Registration Statement for the period required to effect the distribution of the Registrable Stock as set forth in Section 2 hereof;

(e) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the selling Holders may reasonably request in order to facilitate their disposition of their Registrable Stock;

(f) use its commercially reasonable efforts to register and qualify the Registrable Stock under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided, however, that Parent shall not be required in connection therewith or as a condition thereto to qualify to do business in or to file a general consent to service of process in any jurisdiction, unless Parent is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(g) use its commercially reasonable efforts to cause all such Registrable Stock to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Parent are then listed;

(h) provide a transfer agent and registrar for the Registrable Stock and provide a CUSIP number for all such Registrable Stock, in each case not later than the effective date of the Registration Statement;

(i) use its commercially reasonable efforts to furnish, on the date that shares of Registrable Stock are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing Parent for the purposes of such registration, in form and substance as is customarily given to underwriters by Parent in an underwritten public offering, addressed to the underwriters, and (ii) a letter dated as of such date, from the independent public accountants of Parent, in form and substance as is customarily given by independent public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(j) cooperate with the Holders and the managing underwriter (if any) to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under the Registration Statement, and enable such securities to be in such denominations and registered in such names as such Holders or the managing underwriter (if any) may request and keep available and make available to Parent's transfer agent prior to the effectiveness of such Registration Statement a supply of such certificates;

(k) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in form and substance as is customarily given by Parent to underwriters in an underwritten public offering, with the underwriter(s) of such offering;

(l) upon execution of confidentiality agreements in form and substance satisfactory to Parent, promptly make available for inspection by the selling Holders, any underwriter(s) participating in any disposition pursuant to such Registration Statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of Parent (collectively, “**Records**”), and cause Parent's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such Registration Statement and to conduct appropriate due diligence in connection therewith; provided, Records that the Parent determines, in good faith, to be confidential and that it notifies the selling Holders are confidential shall not be disclosed by the selling Holders unless (i) the disclosure of such Records is necessary to avoid or correct a material misstatement or omission in such Registration Statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or is otherwise required by Applicable Law. Each Holder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its affiliates as the basis for any market transactions in Parent's securities unless and until such information is made generally available to the public, and further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it shall give notice to the Parent and allow the Parent to undertake appropriate action to prevent disclosure of the Records deemed confidential;

(m) in the event of the issuance of any stop order suspending the effectiveness of such Registration Statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction, use its commercially reasonable efforts to obtain promptly the withdrawal of such order;

(n) immediately notify the selling Holders at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made, and at the request of any Holder promptly prepare and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus, or a revised prospectus, as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made (following receipt of any supplement or amendment to any prospectus, the selling Holders shall deliver such amended, supplemental or revised prospectus in connection with any offers or sales of Registrable Stock, and shall not deliver or use any prospectus not so supplemented, amended or revised); and

(o) take all such other actions as are reasonably necessary in order to facilitate the disposition of such Registrable Securities.

4. **Furnish Information** . It shall be a condition precedent to the obligations of Parent to take any action pursuant to this Agreement with respect to a Holder that such Holder complete, execute, acknowledge and deliver, or use his, her or its reasonable best efforts to cause to be completed, executed, acknowledged and delivered, such customary selling stockholder questionnaires and other documents, certificates, instruments, representations and warranties, and indemnities as may be reasonably requested by the Parent or the underwriters in connection with the filing of the Registration Statement, including, without limitation, representations and warranties (or indemnities with respect thereto) in connection with (i) such Holder's ownership of his, her or its Registrable Securities to be transferred free and clear of all liens, claims, and encumbrances, (ii) such Holder's power and authority to effect such transfer, and (iii) such matters pertaining to compliance with Applicable Securities Laws by such Holder. The Parent may require each Holder, by written notice given to each such Holder not less than ten (10) Business Days prior to the filing date of the Registration Statement, to promptly, and in any event within seven (7) days after receipt of such notice, furnish in writing to the Parent such information regarding the distribution of the Registrable Securities as the Parent may from time to time reasonably request and such other information as may be legally required in connection with such registration.

5. **Expenses** . All expenses incurred in connection with the registration pursuant to this Agreement, excluding underwriting fees and brokers' discounts and commissions, but including without limitation all registration, filing and qualification fees, word processing, duplicating, printers' and accounting fees, listing fees, messenger and delivery expenses, all fees and expenses

of complying with state securities or blue sky laws, the fees and disbursements of counsel for Parent, and the fees and disbursements of one counsel for the Holders (not to exceed \$50,000), shall be paid by Parent. Each Holder shall bear and pay the discounts, brokerage fees and underwriting fees, if any, applicable to securities offered for his, her or its account in connection with any registrations, filings and qualifications made pursuant to this Agreement.

6. **Transfer of Registration Rights**. The registration rights of a Holder under this Agreement with respect to any Registrable Stock may be transferred or assigned to (i) an Affiliate of such Holder, (ii) if Holder is an individual, an immediate family member or trust for the benefit of such Holder or one or more of such Holder's immediate family members, or (iii) if Holder is a partnership, corporation, or limited liability company, a partner, stockholder or member thereof; *provided, however*, that (i) such Holder shall give Parent written notice prior to the time of such transfer stating the name and address of the transferee and identifying the securities with respect to which the rights under this Agreement are being transferred; (ii) such transferee shall agree in writing, in form and substance reasonably satisfactory to Parent, to be bound as a Holder by the provisions of this Agreement; and (iii) immediately following such transfer the further disposition of such securities by such transferee shall be restricted to the extent set forth under Applicable Securities Laws.

7. **Indemnification**. In the event any Registrable Stock is included in a Registration Statement under this Agreement:

(a) Parent shall indemnify and hold harmless, to the fullest extent permitted by Applicable Law, each selling Holder, such selling Holder's directors, officers, employees, stockholders, partners and members, each underwriter (as defined in the Securities Act) acting on behalf of the selling Holders, each agent (including legal counsel and accountants) and each person, if any, who controls such Holder (within the meaning of the Securities Act) (sometimes referred to collectively herein as the "***Holder Indemnified Parties***"), against any losses, claims, damages or liabilities, joint or several, to which they may become subject under Applicable Securities Laws, insofar as such losses, claims, damages or liabilities (or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or prospectus related thereto (including any prospectus filed under Rule 424 or 430A under the Securities Act) or any amendments or supplements to the foregoing, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by Parent of Applicable Securities Laws, and shall reimburse each such Holder Indemnified Party for any documented legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage or liability as such expenses are incurred; *provided, however*, that the indemnity agreement contained in this Section 7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage or liability if such settlement is effected without the consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed); *provided, further*, that Parent shall not be liable to any Holder Indemnified Party for any loss, claim, damage or liability to the extent that it arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in connection with the Registration Statement, preliminary prospectus, final prospectus or amendments or supplements thereto, in

reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any Holder; provided, further, Parent shall not be liable to any underwriter for any loss, claim, damage or liability to the extent that it arises out of or is based upon an untrue statement or omission made in a preliminary prospectus if the final prospectus shall correct such untrue statement or alleged untrue statement, or such omission or alleged omission, and a copy of the final prospectus has not been sent or given to the relevant person at or prior to the confirmation of sale to such person if such underwriter was under an obligation to deliver such final prospectus and failed to do so. Parent's obligations under this Section 7(a) shall remain in full force and effect regardless of any investigation made by or on behalf of any such Holder Indemnified Party, and shall survive the transfer of such securities by such Holder, and any termination of this Agreement.

(b) Each Holder severally and not jointly shall indemnify and hold harmless, to the fullest extent permitted by Applicable Law, Parent, each of its directors, officers, employees and stockholders, each person, if any, who controls Parent within the meaning of the Securities Act, and each agent (including legal counsel and accountants) for Parent (sometimes referred to collectively herein as the “**Parent Indemnified Parties**”) against any losses, claims, damages or liabilities, joint or several, to which they may become subject under Applicable Securities Laws, insofar as such losses, claims, damages or liabilities (or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or prospectus related thereto (including any prospectus filed under Rule 424 or 430A under the Securities Act) or any amendments or supplements to the foregoing, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the indemnifying party of Applicable Securities Laws, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission or violation or alleged violation was made in the Registration Statement, preliminary or final prospectus, or amendments or supplements thereto, in reliance upon and in conformity with written information furnished by or on behalf of such Holder expressly for use in connection with such registration; and each such Holder shall reimburse any documented legal or other expenses reasonably incurred by Parent Indemnified Party with investigating or defending any such loss, claim, damage or liability as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage or liability if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned or delayed); and provided, further, that the liability of each Holder hereunder by way of indemnification under this Section 7(b) and contribution under Section 7(d) shall be limited to the net proceeds actually received by such Holder from the sale of Registrable Stock covered by such Registration Statement to which such claim or indemnity relates (after giving effect to any discounts and brokerage fees). Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any such Parent Indemnified Party, and shall survive the transfer of such securities by such Holder, and any termination of this Agreement.

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, notify the indemnifying party in

writing of the commencement thereof and the indemnifying party shall have the right to participate in and control the defense thereof with counsel selected by the indemnifying party and reasonably satisfactory to the indemnified party; provided, however, that an indemnified party shall have the right to retain its own counsel, with all reasonable fees and expenses thereof to be paid by such indemnified party, and to be apprised of all progress in any proceeding the defense of which has been assumed by the indemnifying party. The failure to notify an indemnifying party promptly of the commencement of any such action, if and to the extent prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 7, but the omission so to notify the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 7.

(d) To the extent any indemnification by an indemnifying party is prohibited or limited by Applicable Law, the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the indemnifying party and indemnified party in connection with the actions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the losses, claims, damages or liabilities referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 7(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this paragraph. 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 liability of each Holder hereunder by way of contribution under this Section 7(d) and indemnification under Section 7(b) shall be limited to the net proceeds received by such Holder from the sale of Registrable Stock covered by the Registration Statement.

8. General Provisions .

(a) Notices . Any notice or other communications required or permitted to be given under this Agreement will be in writing, and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via electronic mail or facsimile (with confirmation of receipt) to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

If to a Holder:

If to Parent:

At the address set forth on Exhibit A

Facebook, Inc.
1601 Willow Road
Menlo Park, CA 94025
Attention: Colin Stretch, Esq.
Vice President, General Counsel and Secretary
Facsimile No.: (650) 305-7343
Telephone No.: (650) 543-4800

(b) Interpretation . When a reference is made herein to Sections, subsections, or Exhibits, such reference shall be to a Sections, subsections, of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender and neutral forms of such words, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms “hereof,” “herein,” “hereto,” “hereunder” and derivative or similar words refer to this entire Agreement, (iv) references to clauses without a cross-reference to a Section or subsection are references to clauses within the same Section or, if more specific, subsection, (v) references from or through any date shall mean, unless otherwise specified, from and including or through and including, respectively, and (vi) the phrases “provide to” and “deliver to” and phrases of similar import mean that a true, correct and complete paper or electronic copy of the information or material referred to has been delivered to the party to whom such information or material is to be provided. The symbol “\$” refers to United States Dollars. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends and such phrase shall not mean simply “if.” References to a Person are also to its permitted successors and assigns. All references to “days” shall be to calendar days unless otherwise indicated as a “Business Day.” Unless indicated otherwise, (x) all mathematical calculations contemplated by this Agreement shall be rounded to the tenth decimal place, except in respect of payments, which shall be rounded to the nearest whole United States cent and (y) fractions may be greater than one.

(c) Amendment . Except as otherwise provided herein, the provisions of this Agreement may be amended or waived only upon the prior written consent of Parent and the Stockholders’ Agent.

(d) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood and agreed that all parties hereto need not sign the same counterpart. The delivery by facsimile or by electronic delivery in PDF format of this Agreement with all executed signature pages (in counterparts or otherwise) shall be sufficient to bind the parties hereto to the terms and conditions set forth herein. All of the counterparts will together constitute one and the same instrument and each counterpart will constitute an original of this Agreement.

(e) Entire Agreement; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the exhibits attached hereto, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, and (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder. In the event of any conflict between this Agreement and the Merger Agreement, the terms of this Agreement shall control.

(f) Assignment. Except as set forth in Section 6, neither this Agreement nor any of the rights and obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

(g) Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably necessary to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

(h) Arbitration; Submission to Jurisdiction; Consent to Service of Process.

(i) EXCEPT FOR CLAIMS SEEKING THE REMEDY OF INJUNCTION OR SPECIFIC PERFORMANCE, IN THE EVENT THAT A RESOLUTION IS NOT REACHED AMONG THE PARTIES HERETO WITHIN 60 DAYS AFTER WRITTEN NOTICE OF A DISPUTE, THE DISPUTE SHALL BE FINALLY SETTLED BY BINDING ARBITRATION IN SAN FRANCISCO, CALIFORNIA. SUCH ARBITRATION SHALL BE CONDUCTED IN ENGLISH IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION BY ONE ARBITRATOR APPOINTED IN ACCORDANCE WITH SUCH RULES. THE ARBITRATOR SHALL ALLOW SUCH DISCOVERY AS IS APPROPRIATE TO THE PURPOSES OF ARBITRATION IN ACCOMPLISHING A FAIR, SPEEDY AND COST-EFFECTIVE RESOLUTION OF THE DISPUTE. THE ARBITRATOR SHALL REFERENCE THE FEDERAL RULES OF CIVIL PROCEDURE THEN IN EFFECT IN

SETTING THE SCOPE AND TIMING OF DISCOVERY. THE AWARD OF ARBITRATION SHALL BE FINAL AND BINDING UPON THE PARTIES HERETO. THE ARBITRATOR WILL AWARD TO THE PREVAILING PARTY ALL COSTS, FEES AND EXPENSES RELATED TO THE ARBITRATION, INCLUDING REASONABLE FEES AND EXPENSES OF ATTORNEYS, ACCOUNTANTS AND OTHER PROFESSIONALS INCURRED BY THE PREVAILING PARTY, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

(ii) Subject to Section 8(h)(i), the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California and the Federal courts of the United States of America located in the State of California, the place where this Agreement was entered and is to be performed, in respect of the interpretation and enforcement of the provisions of this Agreement and the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a California State or Federal court. The parties hereto hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8(a) or in such other manner as may be permitted by Applicable Law shall be valid and sufficient service thereof. With respect to any particular action, suit or proceeding, venue shall lie solely in the County of Santa Clara, California. Subject to Section 8(h)(i), a party hereto may apply either to a court of competent jurisdiction or to an arbitrator, if one has been appointed, for prejudgment remedies and emergency relief pending final determination of a claim pursuant to this Section 8(h); provided, the appointment of an arbitrator does not preclude a party hereto from seeking prejudgment remedies and emergency relief from a court of competent jurisdiction.

(i) Remedies Cumulative; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy and nothing herein shall be deemed a waiver by any party hereto of any right to specific performance or injunctive relief. It is accordingly agreed that, the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity, and the parties hereto hereby waive the requirement of any posting of a bond in connection with the remedies described herein.

(j) Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, and each Exhibit attached hereto, the application of any Applicable

Law or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

(k) Governing Law. This Agreement, all acts and transactions pursuant hereto and all obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware without reference to such state's principles of conflicts of law that would refer a matter to a different jurisdiction.

(l) Adjustments for Stock Splits, Etc.. Wherever in this Agreement there is a reference to a specific number of Parent Common Stock, upon the occurrence of any subdivision, combination or share dividend of such class of shares, the specific number of shares so referenced in this Agreement shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such class or series of shares by such subdivision, combination or share dividend.

(m) Costs and Attorneys' Fees. In the event that any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing party shall recover all of such party's costs and attorneys' fees incurred in each such action, suit or other proceeding, including any and all appeals or petitions therefrom.

(n) Termination. This Agreement shall terminate and be of no further force and effect upon the earlier of (a) six (6) months following the Closing Date and (b) the date when all Registrable Stock has been sold; *provided*, *however*, the indemnification rights provided by Section 7 shall survive any such termination.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: /s/ David Kling

Name: David Kling

Title: Vice President, Deputy General Counsel and Assistant Secretary

HOLDERS:

Holder Name:

(Please Print)

By: ____

Name: ____

Title: ____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Ahmad Al Qousi
(Please Print)

By: /s/ Ahmad Al Qousi

Name: Ahmad Al Qousi

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Alexander Shturm
(Please Print)

By: /s/ Alexander Shturm

Name: Alexander Shturm

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Alon Golan
(Please Print)

By: /s/ Alon Golan

Name: Alon Golan

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Anastasia Solomennikova
(Please Print)

By: /s/ Anastasia Solomennikova

Name: Anastasia Solomennikova

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Andrew Sveikauskas
(Please Print)

By: /s/ Andrew Sveikauskas

Name: Andrew Sveikauskas

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Anne Hoge Milliken
(Please Print)

By: /s/ Anne Hoge Milliken

Name: Anne Hoge Milliken

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Anton Lavrik
(Please Print)

By: /s/ Anton Lavrik

Name: Anton Lavrik

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Arkadiusz Wahlig
(Please Print)

By: /s/ Arkadiusz Wahlig

Name: Arkadiusz Wahlig

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Brian Acton
(Please Print)

By: /s/ Brian Acton

Name: Brian Acton

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

The Brian L. Acton Trust
(Please Print)

By: /s/ Brian Acton

Name: Brian Acton

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Brian Aspland
(Please Print)

By: /s/ Brian Aspland

Name: Brian Aspland

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Bryan O'Connor
(Please Print)

By: /s/ Bryan D. O'Connor

Name: Bryan D. O'Connor

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Chris Peiffer
(Please Print)

By: /s/ Chris Peiffer

Name: Chris Peiffer

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Clarissa Fong
(Please Print)

By: /s/ Clarissa Fong

Name: Clarissa Fong

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Claudia Gutsch
(Please Print)

By: /s/ Claudia Gutsch

Name: Claudia Gutsch

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Cristina Katherine Trujillo
(Please Print)

By: /s/ Cristina Katherine Trujillo

Name: Cristina Katherine Trujillo

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Derek A. Konigsberg
(Please Print)

By: /s/ Derek A. Konigsberg

Name: Derek A. Konigsberg

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Dmitri Stukalov
(Please Print)

By: /s/ Dmitri Stukalov

Name: Dmitri Stukalov

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

DST INVESTMENTS IX, L.P.

(Please Print)

BY DST MANAGERS LIMITED, ITS GENERAL PARTNER

By: /s/ Sara Hollinrake

Name: Sara Hollinrake

Title: Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

DST GLOBAL III, L.P.

(Please Print)

BY DST MANAGERS LIMITED, ITS GENERAL PARTNER

By: /s/ Sara Hollinrake

Name: Sara Hollinrake

Title: Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

DST GLOBAL III-B, L.P.

(Please Print)

BY DST MANAGERS LIMITED, ITS GENERAL PARTNER

By: /s/ Sara Hollinrake

Name: Sara Hollinrake

Title: Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Ehren Kret
(Please Print)

By: /s/ Ehren Kret

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

EMERALD SOFT SYSTEMS LTD
(Please Print)

By: /s/ Bruce Molynfux

Name: Bruce Molynfux

Title: Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Erik J. Reed
(Please Print)

By: /s/ Erik J. Reed

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Eron Jokipii
(Please Print)

By: /s/ Eron Jokipii

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Eugene Fooksman
(Please Print)

By: /s/ Eugene Fooksman

Name: Eugene Fooksman

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Igor Solomennikov
(Please Print)

By: /s/ Igor Solomennikov

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Jamshid Mahdavi
(Please Print)

By: /s/ Jamshid Mahdavi

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Jean Lee
(Please Print)

By: /s/ Jean Lee

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Jeffrey Griffin
(Please Print)

By: /s/ Jeffrey Griffin

Name: Jeffrey Griffin

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Wang, Jiahua
(Please Print)

By: /s/ Wang, Jiahua

Name: Wang, Jiahua

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Jonathan Wenjie Loh
(Please Print)

By: /s/ Jonathan Wenjie Loh

Name: Jonathan Wenjie Loh

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Joseph T. Kung
(Please Print)

By: /s/ Joseph T. Kung

Name: Joseph T. Kung

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Charles T. Kung and Lisa M. Guerra, as Trustees
of the Kung Guerra Family Living Trust dated 10/30/2003
(Please Print)

By: /s/ Charles T. Kung

Name: Charles T. Kung

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Ken Verbosky
(Please Print)

By: /s/ Ken Verbosky

Name: Ken Verbosky

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Kevin Christensen
(Please Print)

By: /s/ Kevin Christensen

Name: Kevin Christensen

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

JAN KOUM, TRUSTEE OF THE BUTTERFLY TRUST U/A/D 1/20/2004
(Please Print)

By: /s/ Jan Koum

Name: Jan Koum

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

JAN KOUM, TRUSTEE OF THE JAN KOUM TRUST II U/A/D 8/5/2014
(Please Print)

By: /s/ Jan Koum

Name: Jan Koum

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Jan Koum, Trustee of the Jan Koum Trust I u/a/d 4/29/14
(Please Print)

By: /s/ Jan Koum

Name: Jan Koum

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Kuan Loong Yong
(Please Print)

By: /s/ Kuan Loong Yong

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Loubna Boustany
(Please Print)

By: /s/ Loubna Boustany

Name: Loubna Boustany

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Malek Hamdi
(Please Print)

By: /s/ Malek Hamdi

Name: Malek Hamdi

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Manpreet Singh
(Please Print)

By: /s/ Manpreet Singh

Name: Manpreet Singh

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Mark Ryan Hutton
(Please Print)

By: /s/ Mark Ryan Hutton

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Max Keeler
(Please Print)

By: /s/ Max Keeler

Name: Max Keeler

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Michael Donohue
(Please Print)

By: /s/ Michael B. Donohue

Name: Michael B. Donohue

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Mubarik Imam
(Please Print)

By: /s/ Mubarik Imam

Name: Mubarik Imam

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Neeraj Arora
(Please Print)

By: /s/ Neeraj Arora

Name: Neeraj Arora

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Nicolas Adiba
(Please Print)

By: /s/ Nicolas Adiba

Name: Nicolas Adiba

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Pasha Sadri
(Please Print)

By: /s/ Pasha Sadri

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Pooja Challa
(Please Print)

By: /s/ Pooja Challa

Name: Pooja Challa

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Richard Joseph Russo
(Please Print)

By: /s/ Richard Joseph Russo

Name: Richard Joseph Russo

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Rodrigo Nones
(Please Print)

By: /s/ Rodrigo Nones

Name: Rodrigo Nones

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SEQUOIA CAPITAL GLOBAL GROWTH FUND, L.P.
(Please Print)

By: /s/ Jim Goetz

Name: Jim Goetz

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SEQUOIA CAPITAL GLOBAL GROWTH PRINCIPALS FUND, L.P.
(Please Print)

By: /s/ Jim Goetz

Name: Jim Goetz

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SEQUOIA CAPITAL U.S. VENTURE 2010 FUND, L.P.
(Please Print)

By: /s/ Jim Goetz

Name: Jim Goetz

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SEQUOIA CAPITAL U.S. VENTURE 2010 PARTNERS FUND (Q), L.P.
(Please Print)

By: /s/ Jim Goetz

Name: Jim Goetz

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SEQUOIA CAPITAL U.S. VENTURE 2010 PARTNERS FUND, L.P
(Please Print)

By: /s/ Jim Goetz

Name: Jim Goetz

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

SC US GFV Holdings, Ltd.
(Please Print)

By: /s/ Doug Leone

Name: Doug Leone

Title: Managing Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Sergey Petrov
(Please Print)

By: /s/ Sergey Petrov

Name: Sergey Petrov

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Shruthi Murthy
(Please Print)

By: /s/ Shruthi Murthy

Name: __

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Sophia T. Kung
(Please Print)

By: /s/ Sophia T. Kung

Name: Sophia Kung

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

The Tegan McComb Bradford Trust
(Please Print)

By: /s/ Tegan Bradford

Name: Tegan Bradford

Title: Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Vicki Lee
(Please Print)

By: /s/ Vicki Lee

Name: Vicki Lee

Title: __

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PARENT:

FACEBOOK, INC.

By: __

Name: __

Title: __

HOLDERS:

Holder Name:

Yoko Sophia Rizzo
(Please Print)

By: /s/ Yoko Sophia Rizzo

Name: Yoko Sophia Rizzo

Title: __

Exhibit A

**WHATSAPP INC.
STOCKHOLDERS**

Stockholder	Physical Address and Facsimile	Email Address	Number of Shares of Registrable Stock
Ahmad Al Qousi			(1)
Alexander Shturm			(1)
Alon Golan			(1)
Anastasia Solomennikova			(1)
Andrew Sveikauskas			(1)
Anne Hoge Milliken			(1)
Anton Lavrik			(1)
Arkadiusz Wahlig			(1)
Brian Acton			(1)
Brian Aspland			(1)
Bryan O'Connor			(1)
Charles T. Kung and Lisa M. Guerra, Trustees of the Kung Guerra Family Living Trust DTD 10/30/03			(1)
Chris Peiffer			(1)
Clarissa Fong			(1)
Claudia Gutsch			(1)
Cristina Trujillo			(1)
Derek Konigsberg			(1)
Dmitri Stukalov			(1)
DST Global III, L.P.			(1)
DST Global III-B, L.P.			(1)
DST Investments IX, L.P.			(1)
Ehren Kret			(1)
Emerald Soft Systems, Ltd.			(1)
Erik J. Reed			(1)
Eron Jokipii			(1)
Eugene Fooksman			(1)
Igor Solomennikov			(1)
Jamshid Mahdavi			(1)
Jan Koum, Trustee of The Butterfly Trust u/a/d 1/20/2004			(1)
Jan Koum, Trustee of The Jan Koum Trust I u/a/d 4/29/2014			(1)
Jan Koum, Trustee of The Jan Koum Trust II u/a/d 8/5/2014			(1)

Jean Lee			(1)
Jeffrey Griffin			(1)
Jiahua Wang			(1)
Jonathan Loh			(1)
Joseph T Kung			(1)
Ken Verbosky			(1)
Kevin Christensen			(1)
Kuan Yong			(1)
Loubna Boustany			(1)
Malek Hamdi			(1)
Manpreet Singh			(1)
Mark Ryan Hutton			(1)
Max Keeler			(1)
Michael Donohue			(1)
Mubarik Imam			(1)
Neeraj Arora			(1)
Nicolas Adiba			(1)
Pasha Sadri			(1)
Pooja Challa			(1)
Richard Russo			(1)
Rodrigo Nones			(1)
SC US GF V Holdings, Ltd.			(1)
Sequoia Capital Global Growth Fund, LP			(1)
Sequoia Capital Global Growth Principals Fund, LP			(1)
Sequoia Capital U.S. Venture 2010 Fund, LP			(1)
Sequoia Capital U.S. Venture 2010 Partners Fund (Q), LP			(1)
Sequoia Capital U.S. Venture 2010 Partners Fund, LP			(1)
Sergey Petrov			(1)
Shruthi Murthy			(1)
Sophia T Kung			(1)
The Brian L. Acton Trust			(1)
The Tegan McComb Bradford Trust dated June 20, 2013			(1)
Vicki Lee			(1)
Yoko Rizzo			(1)

(1) As listed on the Spreadsheet delivered pursuant to the terms of the Merger Agreement.

**FORM OF
[SUBORDINATED] INDENTURE**

Between

FACEBOOK, INC.

and

_____, **AS TRUSTEE**

Dated as of _____, 20__

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**TABLE SHOWING REFLECTION IN THIS [SUBORDINATED] INDENTURE OF
CERTAIN PROVISIONS OF THE TRUST INDENTURE ACT OF 1939***

Section of Indenture	Section of Act
310(a)(1)	7.09
310(a)(2)	7.09
310(a)(3)	Inapplicable
310(a)(4)	Inapplicable
310(a)(5)	7.09
310(b)	7.08, 7.10
310(c)	Inapplicable
311(a)	7.13(a), 7.13(c)
311(b)	7.13(b), 7.13(c)
311(c)	Inapplicable
312(a)	5.01, 5.02(a)
312(b)	5.02(b)
312(c)	5.02(c)
313(a)	5.04(a)
313(b)(1)	Inapplicable
313(b)(2)	5.04(b)
313(c)	5.04(c)
313(d)	5.04(d)
314(a)(1)	5.03(a)
314(a)(2)	5.03(b)
314(a)(3)	5.03(c)
314(a)(4)	5.03(d)
314(b)	Inapplicable
314(c)	13.03
314(d)	Inapplicable
314(e)	13.03
314(f)	Omitted
315(a)	7.01
315(b)	6.10
315(c)	7.01
315(d)	7.01
315(e)	6.11
316(a)(1)	6.09
316(a)(2)	Omitted
316(b)	6.06
316(c)	6.09
317(a)	6.02, 6.03
317(b)	4.06
318(a)	13.05

* This Table is not part of the [Subordinated] Indenture.

THIS [SUBORDINATED] INDENTURE, dated as of _____, 20__, between FACEBOOK, INC., a Delaware corporation (the “ *Company* ”), and _____, a national banking association duly organized and existing under the laws of the United States, as trustee (the “ *Trustee* ”).

WITNESSETH:

WHEREAS, the Company has duly authorized the issuance, sale, execution and delivery, from time to time, of its unsecured evidences of [subordinated] indebtedness (hereinafter referred to as the “ *[Subordinated] Securities* ”), without limit as to principal amount, issuable in one or more series, the amount and terms of each such series to be determined as hereinafter provided; and, to provide the terms and conditions upon which the [Subordinated] Securities are to be issued, authenticated and delivered, the Company has duly authorized the execution of this [Subordinated] Indenture; and

WHEREAS, all acts and things necessary to make the [Subordinated] Securities, when executed by the Company and authenticated and delivered by the Trustee as in this [Subordinated] Indenture provided, the valid, binding and legal subordinated obligations of the Company, and to constitute this [Subordinated] Indenture a valid indenture and agreement according to its terms, have been done and performed, and the execution of this [Subordinated] Indenture and the issuance hereunder of the [Subordinated] Securities have in all respects been duly authorized;

NOW, THEREFORE, THIS [SUBORDINATED] INDENTURE

WITNESSETH:

That in order to declare the terms and conditions upon which the [Subordinated] Securities are to be issued, authenticated and delivered, and in consideration of the premises and of the purchase and acceptance of the [Subordinated] Securities by the Holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective Holders from time to time of the [Subordinated] Securities or of any series thereof, as follows:

**ARTICLE ONE
DEFINITIONS**

SECTION 1.01. Certain Terms Defined. For all purposes of this [Subordinated] Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article One have the meanings assigned to them in this Article One, and include the plural as well as the singular;
 - (b) 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;
 - (c) all accounting terms not otherwise defined herein shall have the meanings assigned to them and all computations herein provided for shall be made, in accordance with
-

generally accepted accounting principles, and the term “ *U.S. generally accepted accounting principles* ” shall mean such principles as they exist at the date of applicability thereof; and

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

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

“ *Agent* ” means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

“ *Authenticating Agent* ” shall have the meaning set forth in Section 7.14.

“ *Board of Directors* ” shall mean the Board of Directors of the Company, or any duly authorized committee of such Board of Directors.

“ *Board Resolution* ” shall mean one or more resolutions of the Board of Directors of the Company certified by the Secretary or by an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification.

“ *Business Day* ” means, with respect to any [Subordinated] Security, a day that is not a Saturday, Sunday or a day on which the office of the Trustee or banking institutions in the City of New York in which amounts are payable, as specified in the form of such [Subordinated] Security, are authorized or required by any applicable law or regulation to be closed.

“ *Commission* ” shall mean the U.S. 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 [Subordinated] Indenture such Commission is not existing and performing the duties theretofore assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“ *Company* ” shall mean Facebook, Inc., a Delaware corporation, until a successor corporation shall have become such pursuant to the applicable provisions hereof, and thereafter “Company” shall mean such successor Company.

“ *Company Order* ” means a written statement, request or order of the Company signed in its name by the Chairman of the Board of Directors of the Company, the President or Chief Executive Officer, any Vice President, the Treasurer, or the Chief Financial Officer of the Company.

“ *covenant defeasance* ” shall have the meaning set forth in Section 11.01.

“ *Defaulted Interest* ” shall have the meaning set forth in Section 2.07.

“ *Depository* ” shall mean, with respect to the [Subordinated] Securities of any series issuable or issued in whole or in part in the form of one or more Global [Subordinated] Securities, the Person designated as Depository by the Company pursuant to Section 2.03 of this [Subordinated] Indenture until a successor Depository shall have become such pursuant to the applicable provisions of this [Subordinated] Indenture, and thereafter the term “Depository” shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, “Depository” as used with respect to the [Subordinated] Securities of any such series shall mean the Depository with respect to the [Subordinated] Securities of that series.

“ *Euro* ” or “ *euro* ” means the currency adopted by those countries participating in the third stage of the European Monetary Union.

“ *Event of Default* ” with respect to [Subordinated] Securities of any series shall mean any event specified as such in Section 6.01 and any other event as may be established with respect to the securities of such series as permitted by Section 2.03. An Event of Default shall “exist” if an Event of Default shall have occurred and be continuing.

“ *Exchange Act* ” means the Securities Exchange Act of 1934, as amended.

“ *Foreign Currency* ” means a currency issued by the government of a country other than the United States of America, and the European Currency Unit as defined and revised from time to time by the European Monetary System of the European Community and/or Euros.

“ *Global [Subordinated] Security* ” means a [Subordinated] Security evidencing all or a portion of a series of Registered [Subordinated] Securities, issued to the Depository for such series in accordance with Section 2.12, and bearing the legend prescribed in Section 2.12 and any other legend required by the Depository for such series.

“ *Holder* ,” “ *Holder of [Subordinated] Securities* ,” “[Subordinated] Securityholder” or any other similar term means in the case of any Registered [Subordinated] Security, the person in whose name such [Subordinated] Security is registered in the Register kept by the Company for that purpose in accordance with the terms hereof.

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

“ *IRS* ” means the Internal Revenue Service of the United States Department of the Treasury, or any successor entity.

“ *Judgment Currency* ” has the meaning set forth in Section 13.08.

“ *Officer’s Certificate* ” shall mean a certificate signed by the Chairman of the Board of Directors of the Company, any Vice-Chairman of the Board of Directors of the Company, the President or Chief Executive Officer or any Vice-President, the Treasurer, the Chief Financial Officer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.

“ *Opinion of Counsel* ” shall mean a written opinion of legal counsel who may be an employee of the Company or other counsel satisfactory to the Trustee.

“ *Original Issue Date* ” of any [Subordinated] Security (or portion thereof) means the earlier of (a) the date of such [Subordinated] Security or (b) the date of any [Subordinated] Security (or portion thereof) for which such [Subordinated] Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

“ *Original Issue Discount [Subordinated] Security* ” shall mean (a) any [Subordinated] Security which provides for an amount less than the principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01 or (b) any other [Subordinated] Security which for United States Federal income tax purposes would be considered an original issue discount security.

“ *Outstanding* ” when used with reference to [Subordinated] Securities shall, subject to the provisions of Section 8.04, mean, as of the date of determination, all [Subordinated] Securities theretofore authenticated and delivered under this [Subordinated] Indenture, except:

(a) [Subordinated] Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) [Subordinated] Securities, or portions thereof, for whose payment or redemption moneys or U.S. Government Obligations (as provided in Section 11.01) in the necessary amount have been theretofore deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company (if the Company shall act as its own Paying Agent) in trust for the Holders of such [Subordinated] Securities, provided that if such [Subordinated] Securities or portions thereof, are to be redeemed prior to the Stated Maturity thereof, notice of such redemption has been duly given as provided in Article Three hereof, or provision therefor satisfactory to the Trustee has been made;

(c) [Subordinated] Securities in exchange for or in lieu of which other [Subordinated] Securities shall have been authenticated and delivered under this [Subordinated] Indenture; and

(d) [Subordinated] Securities alleged to have been destroyed, lost or stolen which have been paid as provided in Section 2.07 hereof.

In determining whether the Holders of the requisite principal amount of Outstanding [Subordinated] Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount [Subordinated] Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination as if a declaration of acceleration of the maturity thereof pursuant to Section 6.01 had been made.

“ *Paying Agent* ” means any Person authorized by the Company to pay the principal of and any interest and premium, if any, on any [Subordinated] Securities on behalf of the Company.

“ *Periodic Offering* ” means an offering of [Subordinated] Securities of a series from time to time, the specific terms of which [Subordinated] Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such [Subordinated] Securities.

“ *Person* ” shall mean an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, or a government or any agency, authority or political subdivision thereof.

“ *Predecessor [Subordinated] Security* ” of any particular [Subordinated] Security means every previous [Subordinated] Security evidencing all or a portion of the same debt as that evidenced by such particular [Subordinated] Security; and, for the purposes of this definition, any [Subordinated] Security authenticated and delivered under Section 2.04 in exchange for or in lieu of a mutilated, destroyed, lost or stolen [Subordinated] Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen [Subordinated] Security.

“ *principal* ” whenever used with reference to the [Subordinated] Securities or any [Subordinated] Security or any portion thereof, shall be deemed to include “and premium, if any,” provided, however, that such inclusion of premium, if any, shall under no circumstances result in the double counting of such premium for the purpose of any calculation required hereunder.

“ *Principal Office of the Trustee* ” shall mean the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered, except that with respect to presentation of [Subordinated] Securities for payment such term shall mean any office or agency of the Trustee at which at any particular time its corporate trust services business shall be conducted. The present address of the Principal Office of the Trustee is administered is _____, Attention: _____.

“ *Record Date* ” for the interest payable on any Interest Payment Date on any series of [Subordinated] Securities shall mean the date specified as such in the [Subordinated] Securities of such series.

“ *Register* ” shall mean the books for the registration and transfer of [Subordinated] Securities which books are kept by the Trustee pursuant to Section 2.08.

“ *Registered [Subordinated] Security* ” means any [Subordinated] Security registered on the Register of the Company.

“ *Required Currency* ” shall have the meaning set forth in Section 13.08.

“ *Responsible Officer* ” when used with respect to the Trustee shall mean an officer of the Trustee or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of

such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

[“ *Senior Indebtedness* ” means (i) the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Company is responsible for the payment of, such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings; (vii) obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, and similar arrangements, and (viii) such other obligations as may be established as “Senior Indebtedness” with respect to the securities of any series as permitted by Section 2.03, unless, in each case, the instrument by which the Company incurred, assumed or guaranteed the indebtedness or obligations described in clauses (i) through (viii) hereof expressly provides that such indebtedness or obligation is subordinate or junior in right or payment to any other indebtedness or obligation is subordinate or junior in right of payment to any other indebtedness or obligations of the Company.]

“ *Special Record Date* ” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.07.

“ *Stated Maturity* ” when used with respect to any [Subordinated] Security or any installment of interest thereon means the date specified in such [Subordinated] Security as the fixed date on which the principal of such [Subordinated] Security or such installment of interest is due and payable.

“ *[Subordinated] Indenture* ” shall mean this instrument as originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein, and shall include the form and terms of particular series of [Subordinated] Securities established in accordance with the provisions of Sections 2.03 and 2.04.

“ *[Subordinated] Security* ” or “ *[Subordinated] Securities* ” shall mean any security or securities of the Company without regard to series, authenticated and delivered under this [Subordinated] Indenture.

“ *Supplemental [Subordinated] Indenture* ” shall mean an indenture supplemental hereto as such Supplemental [Subordinated] Indenture may be originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein and therein.

“ *Trustee* ” shall mean the party named as such in the first paragraph of this [Subordinated] Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this [Subordinated] Indenture, and thereafter “ *Trustee* ” shall mean such successor Trustee. “ *Trustee* ” shall also 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 [Subordinated] Securities of any series shall mean the trustee with respect to the [Subordinated] Securities of such series.

“ *Trust Indenture Act* ” shall mean the Trust Indenture Act of 1939, as amended as of the date of this [Subordinated] Indenture.

“ *United States Dollars* ” shall mean the lawful currency of the United States of America.

“ *U.S. Government Obligations* ” shall have the meaning set forth in Section 11.01.

“ *Yield to Maturity* ” means the yield to maturity on a series of securities, calculated at the time of issuance of such series, or, if applicable, at the most recent redetermination of interest on such series, and calculated in accordance with accepted financial practice.

ARTICLE TWO

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION, TRANSFER AND EXCHANGE OF [SUBORDINATED] SECURITIES

SECTION 2.01. Form of [Subordinated] Securities and Trustee’s Certificate of Authentication . The [Subordinated] Securities of each series shall be substantially in such form (not inconsistent with this [Subordinated] Indenture) as shall be established by or pursuant to one or more Board Resolutions and as set forth in an Officer’s Certificate or Supplemental [Subordinated] Indenture, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this [Subordinated] Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements thereon as the Board of Directors may deem appropriate and as are not inconsistent with the provisions of this [Subordinated] Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the [Subordinated] Securities of such series may be listed, or to conform to usage all as may be determined by the officers executing such [Subordinated] Securities as evidenced by their execution of such [Subordinated] Securities.

The definitive [Subordinated] Securities and each Global [Subordinated] Security may be printed, lithographed or fully or partly engraved or produced in any other manner, all as determined by the officers executing such [Subordinated] Securities as evidenced by their execution thereof.

SECTION 2.02. Form of Trustee's Certificate of Authentication . The Trustee's certificate of authentication on all [Subordinated] Securities shall be in substantially the following form:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the [Subordinated] Securities, of the series designated herein, referred to in the within-mentioned [Subordinated] Indenture.

_____, as Trustee

By: _____
Authorized Signatory

SECTION 2.03. Amount Unlimited, Issuable in Series .

(a) The aggregate principal amount of [Subordinated] Securities which may be authenticated and delivered under this [Subordinated] Indenture is not limited. The [Subordinated] Securities may be issued in one or more series.

The following terms and provisions of each series of [Subordinated] Securities shall be established in or pursuant to one or more Board Resolutions and set forth in an Officer's Certificate detailing such establishment or established in one or more Supplemental [Subordinated] Indentures prior to the issuance of [Subordinated] Securities of any series:

(1) the designation of the series of [Subordinated] Securities of the series (which shall distinguish the [Subordinated] Securities of such series from all other series of [Subordinated] Securities) and which may be part of a series of [Subordinated] Securities previously issued;

(2) any limit upon the aggregate principal amount of the particular series of [Subordinated] Securities which may be executed, authenticated and delivered under this [Subordinated] Indenture; provided, however, that nothing contained in this Section 2.03 or elsewhere in this [Subordinated] Indenture or in the [Subordinated] Securities or in an Officer's Certificate or in a Supplemental [Subordinated] Indenture is intended to or shall limit execution by the Company or authentication and delivery by the Trustee of [Subordinated] Securities under the circumstances contemplated by Sections 2.08, 2.09, 2.11, 3.03 and 10.04;

(3) if other than United States Dollars, the coin, currency or currencies or composite currency in which principal of and interest and any premium on such series of [Subordinated] Securities shall be payable (including, but not limited to, any Foreign Currency);

(4) the Stated Maturity for payment of principal of such series of [Subordinated] Securities;

(5) the rate or rates at which such series of [Subordinated] Securities shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable, the terms and conditions of any deferral of interest and the additional interest, if any, thereon, the right, if any, of the Company to extend the time for payment of interest, the terms and duration of such extension rights and (in the case of Registered [Subordinated] Securities) the date or dates on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(6) the place or places where the principal of and any interest on [Subordinated] Securities of any series shall be payable, where such [Subordinated] Securities may be surrendered for registration of transfer, where such [Subordinated] Securities may be surrendered for exchange and where notice and demands to or upon the Company, in respect of such [Subordinated] Securities, and this [Subordinated] Indenture may be served, if other than as provided in Section 4.03;

(7) the right, if any, of the Company to redeem [Subordinated] Securities, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which [Subordinated] Securities of the series may be so redeemed;

(8) the obligation, if any, of the Company to redeem, purchase or repay [Subordinated] Securities of the series pursuant to any mandatory redemption or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any terms and conditions upon which [Subordinated] Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

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

(10) the percentage of the principal amount at which the [Subordinated] Securities will be issued, and, if other than the principal amount thereof, the portion of the principal amount of such series of [Subordinated] Securities which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;

(11) if other than the U.S. Dollar, the coin, currency or currencies in which payment of the principal of or interest on the [Subordinated] Securities of such series shall be payable, including composite currencies or currency units and any related provisions for the calculations of payments and denominations;

(12) if the principal or interest on the [Subordinated] Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the [Subordinated] Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(13) if the amount of payments or principal of and interest on the [Subordinated] Securities of the series may be determined with reference to an index or formula based on a coin, currency, composite currency or currency unit other than that in which the [Subordinated] Securities of the series are denominated, the manner in which such amounts shall be determined;

(14) whether and under what circumstances the Company will pay additional amounts on the [Subordinated] Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem the [Subordinated] Securities of the series rather than pay such additional amounts;

(15) if the [Subordinated] Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary [Subordinated] Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(16) any trustees, depositaries, authenticating or paying agents, transfer agents or registrars of any other agents with respect to the [Subordinated] Securities of such series;

(17) any additional events of default or covenants with respect to the [Subordinated] Securities of a particular series not set forth herein;

(18) [the terms of subordination applicable to such series of [Subordinated] Securities (including any additional obligations that shall be included within the definition of “*Senior Indebtedness*”);]

(19) the terms and conditions, if any, upon which any [Subordinated] Securities of such series may or shall be converted or exchanged into common stock of the Company; and

(20) any other terms of such series of [Subordinated] Securities (which terms shall not be inconsistent with the provisions of this [Subordinated] Indenture).

(b) All [Subordinated] Securities of any one series shall be substantially identical except that any series may have serial maturities and different interest rates for different maturities and except in the case of Registered [Subordinated] Securities as to denomination and the differences herein specified between Global [Subordinated] Securities and Registered [Subordinated] Securities issued in definitive form and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officer’s Certificate or Supplemental [Subordinated] Indenture relating to such series of [Subordinated] Securities. All [Subordinated] Securities of any one series need not be issued at the same time, and, unless otherwise provided in the Officer’s Certificate or Supplemental [Subordinated] Indenture relating to such series, a series may be reopened for issuances of additional [Subordinated] Securities of such series.

SECTION 2.04. Authentication and Delivery of [Subordinated] Indentures.

At any time and from time to time after the execution and delivery of this [Subordinated] Indenture, the Company may deliver any series of [Subordinated] Securities executed by the Company to the Trustee for authentication by it together with the applicable documents referred to below in this Section 2.04, and the Trustee shall thereupon authenticate and deliver said [Subordinated] Securities (or if only a single [Subordinated] Security, such [Subordinated] Security) to or upon the written order of the Company, signed by an officer of the Company, without any further corporate action. The maturity date, original issue date, interest rate and any other terms of the [Subordinated] Securities of such series shall be determined by or pursuant to such Company Order and procedures. In authenticating such [Subordinated] Securities and accepting the additional responsibilities under this [Subordinated] Indenture in relation to such [Subordinated] Securities, the Trustee shall be entitled to receive (in the case of subparagraphs (2), (3) and (4) below only at or before the time of the first request of the Company to the Trustee to authenticate [Subordinated] Securities of such series) and (subject to Section 7.01) shall be fully protected in relying upon, the following enumerated documents unless and until such documents have been superseded or revoked:

(a) a Company Order requesting such authentication and setting forth delivery instructions if the [Subordinated] Securities are not to be delivered to the Company, provided that, with respect to [Subordinated] Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such [Subordinated] Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver [Subordinated] Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, pursuant to a Company Order or pursuant to procedures acceptable to the Trustee as may be specified from time to time by a Company Order, and (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of [Subordinated] Securities of such series shall be determined by a Company Order or pursuant to such procedures;

(b) any Board Resolution, Officer's Certificate and/or executed Supplemental [Subordinated] Indenture referred to in Section 2.01 and 2.03 by or pursuant to which the forms and terms of the [Subordinated] Securities were established;

(c) an Officer's Certificate setting forth the form or forms and terms of the [Subordinated] Securities stating that the form or forms and terms of the [Subordinated] Securities have been established pursuant to Sections 2.01 and 2.03 and comply with this [Subordinated] Indenture, and covering such other matters as the Trustee may reasonably request; and

(d) either one or more Opinions of Counsel, or a letter addressed to the Trustee permitting it to rely on one or more Opinions of Counsel, substantially to the effect that:

(1) the form or forms of the [Subordinated] Securities have been duly authorized and established in conformity with the provisions of this [Subordinated] Indenture;

(2) the terms of the [Subordinated] Securities have been duly authorized and established in conformity with the provisions of this [Subordinated] Indenture, and, certain

terms of the [Subordinated] Securities have been established pursuant to a Board Resolution, an Officer's Certificate or a Supplemental [Subordinated] Indenture in accordance with this [Subordinated] Indenture, and when such other terms as are to be established pursuant to procedures set forth in a Company Order shall have been established, all such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this [Subordinated] Indenture;

(3) this Indenture and such [Subordinated] Securities, when executed and issued by the Company and authenticated by the Trustee in accordance with the provisions of this [Subordinated] Indenture and duly paid for by the purchasers thereof, and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as any rights thereunder may be limited by the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally; the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law; the effect of applicable court decisions invoking statutes or principles of equity, which have held that certain covenants and provisions of agreements are unenforceable where the breach of such covenants or provisions imposes restrictions or burdens upon a borrower, and it cannot be demonstrated that the enforcement of such restrictions or burdens is necessary for the protection of the creditor, or which have held that the creditor's enforcement of such covenants or provisions under the circumstances would have violated the creditor's covenants of good faith and fair dealing implied under New York law; and the effect of New York statutes and rules of law which cannot be waived prospectively by a borrower, and such counsel need express no opinion with regard to the enforceability of Section 7.06 or of a judgment denominated in a currency other than United States Dollars; and

(4) the Company has complied with all applicable Federal laws and requirements in respect of the execution and delivery of such [Subordinated] Securities; and

(5) such other opinions as the Company may be required to deliver under the Trust Indenture Act.

(e) if the Securities are to be secured, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314; and

(f) if the Securities are to be convertible, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314.

In rendering such opinions, any counsel may qualify any opinions as to enforceability by stating that such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium, fraudulent transfer and other similar laws affecting the rights and remedies of creditors and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Such counsel may rely upon opinions of other

counsel (copies of which shall be delivered to the Trustee) reasonably satisfactory to the Trustee, in which case the opinion shall state that such counsel believes he and the Trustee are entitled so to rely. Such counsel may also state that, insofar as such opinion involves factual matters, he has relied, to the extent he deems proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

The Trustee shall have the right to decline to authenticate and deliver any [Subordinated] Securities under this section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee or a trust committee of directors or trustees shall determine that such action would expose the Trustee to personal liability to existing Holders or would affect the Trustee's own rights, duties or immunities under the [Subordinated] Securities, this [Subordinated] Indenture or otherwise.

SECTION 2.05. Execution of [Subordinated] Securities. The [Subordinated] Securities shall be executed manually or in facsimile, by any two of the Chairman of the Board, Chief Executive Officer, the President, and Vice President, the Secretary, the Chief Financial Officer, or the Treasurer of the Company under its corporate seal which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise. Only such [Subordinated] Securities as shall bear thereon a certificate of authentication substantially in the form recited herein, executed by the Trustee manually by an authorized officer, shall be entitled to the benefits of this [Subordinated] Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Trustee upon any [Subordinated] Security executed by the Company shall be conclusive evidence that the [Subordinated] Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this [Subordinated] Indenture. Typographical or other errors or defects in the seal or facsimile signature on any [Subordinated] Security or in the text thereof shall not affect the validity or enforceability of such [Subordinated] Security if it has been duly authenticated and delivered by the Trustee.

In case any officer of the Company who shall have signed any of the [Subordinated] Securities (manually or in facsimile) shall cease to be such officer before the [Subordinated] Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such [Subordinated] Securities nevertheless may be authenticated and delivered or disposed of as though the Person who signed such [Subordinated] Securities had not ceased to be such officer of the Company. Also, any [Subordinated] Security may be signed on behalf of the Company by such Persons as on the actual date of execution of such [Subordinated] Security shall be the proper officers of the Company, although at the date of the execution of this [Subordinated] Indenture or on the nominal date of such [Subordinated] Security any such Person was not such officer.

SECTION 2.06. Certificate of Authentication. Only such [Subordinated] Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee by the manual signature of one of its authorized officers, shall be entitled to the benefits of this [Subordinated] Indenture or be valid or obligatory for any purpose. The execution of such certificate by the Trustee upon any [Subordinated] Security executed by the

Company shall be conclusive evidence that the [Subordinated] Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this [Subordinated] Indenture.

SECTION 2.07. Denominations; Payment of Interest on [Subordinated] Securities.

(a) The [Subordinated] Securities of each series may be issued in such denominations as shall be specified as contemplated by Section 2.03. In the absence of such provisions with respect to the [Subordinated] Securities of any series, the [Subordinated] Securities of such series shall be issued in denominations of \$1,000 and any integral multiple thereof. The [Subordinated] Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine.

(b) If the [Subordinated] Securities of any series shall bear interest, each [Subordinated] Security of such series shall bear interest from the applicable date at the rate per annum specified in the Officer's Certificate or Supplemental [Subordinated] Indenture with respect to such series of [Subordinated] Securities. Unless otherwise specified in the Officer's Certificate or Supplemental [Subordinated] Indenture with respect to the [Subordinated] Securities of any series, interest on the [Subordinated] Securities of such series shall be computed on the basis of a 360-day year of twelve 30-day months. Such interest shall be payable on the Interest Payment Dates specified in the Officer's Certificate or Supplemental [Subordinated] Indenture with respect to such series of [Subordinated] Securities. The Person in whose name any [Subordinated] Security (or one or more Predecessor [Subordinated] Securities) is registered at the close of business on the applicable Record Date for the series of which such [Subordinated] Security is a part shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding the cancellation of such [Subordinated] Security upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date unless such [Subordinated] Security shall have been called for redemption on a Redemption Date which is subsequent to such Record Date and prior to such Interest Payment Date or unless the Company shall default in the payment of interest due on such Interest Payment Date on any [Subordinated] Security of such series.

Any interest on any [Subordinated] 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 registered Holder on the relevant Record Date solely by virtue of such Holder 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 on the [Subordinated] Securities of any series to the Persons in whose names such [Subordinated] Securities (or their respective Predecessor [Subordinated] Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each [Subordinated] Security and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), 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, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this subsection provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor 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 a [Subordinated] Security of such series at such Holder's address as it appears in the 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 mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the [Subordinated] Securities of such series are registered on such Special Record Date and shall no longer be payable pursuant to the following subsection (2).

(2) The Company may make payment of any Defaulted Interest on the [Subordinated] Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such [Subordinated] 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 subsection, such payment shall be deemed practicable by the Trustee.

Interest on [Subordinated] Securities of any series that bear interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Register.

Subject to the foregoing provisions of this Section 2.07, each [Subordinated] Security delivered under this [Subordinated] Indenture upon transfer of or in exchange for or in lieu of any other [Subordinated] Security shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other [Subordinated] Security and each such [Subordinated] Security shall bear interest from such date, such that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

SECTION 2.08. Registration, Transfer and Exchange of [Subordinated] Securities. Except as specifically otherwise provided herein with respect to Global [Subordinated] Securities, [Subordinated] Securities of any series may be exchanged for a like aggregate principal amount of [Subordinated] Securities of the same series of other authorized denominations. [Subordinated] Securities to be exchanged shall be surrendered at the offices or agencies to be maintained in accordance with the provisions of Section 4.03 and the Company shall execute the [Subordinated] Security or [Subordinated] Securities, and the Trustee shall authenticate and deliver in exchange therefor the [Subordinated] Security or [Subordinated] Securities which the [Subordinated] Securityholder making the exchange shall be entitled to receive.

The Company shall cause the Trustee to keep or cause to be kept, at one or more of the offices or agencies to be maintained by the Trustee in accordance with the provisions of Section 4.03 with respect to the [Subordinated] Securities of each series, the Register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of

the Registered [Subordinated] Securities of such series and the transfer of Registered [Subordinated] Securities of such series as in this Article provided. The Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the Register shall be open for inspection by the Trustee and any registrar of the [Subordinated] Securities of such series other than the Trustee. Upon due presentment for transfer of any [Subordinated] Security of any series at the offices or agencies of the Company to be maintained in accordance with Section 4.03 with respect to the Registered [Subordinated] Securities of such series, the Company shall execute a new [Subordinated] Security and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new [Subordinated] Security or Registered [Subordinated] Securities of the same series for a like aggregate principal amount of authorized denominations. Notwithstanding any other provisions of this Section 2.08, unless and until it is exchanged in whole or in part for Registered [Subordinated] Securities in definitive form, a Global [Subordinated] Security representing all or a portion of the Registered [Subordinated] Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

At the option of the Holder thereof, Registered [Subordinated] Securities of any series (other than a Global [Subordinated] Security, except as set forth below) may be exchanged for a Registered [Subordinated] Security or Registered [Subordinated] Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Registered [Subordinated] Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.03 and upon payment, if the Company shall so require, of the charges hereinafter provided. All [Subordinated] Securities surrendered upon any exchange or transfer provided for in this [Subordinated] Indenture shall be promptly cancelled and disposed of by the Trustee, and the Trustee shall deliver a certificate of disposition thereof to the Company.

All Registered [Subordinated] Securities of any series presented or surrendered for exchange, transfer, redemption, conversion or payment shall, if so required by the Company or any registrar of the [Subordinated] Securities of such series, be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and such registrar, duly executed by the registered Holder or by such Person's attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of [Subordinated] Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required to exchange or transfer (a) any [Subordinated] Securities of any series during a period beginning at the opening of business 15 days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of [Subordinated] Securities of such series and ending at the close of business on the day of such publication or mailing or (b) any [Subordinated] Securities called or selected for redemption in whole or in part, except, in the case of [Subordinated] Securities called for redemption in part, the portion thereof not so

called for redemption in whole or in part or during a period beginning at the opening of business on any Record Date for such series and ending at the close of business on the relevant Interest Payment Date therefor.

SECTION 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen [Subordinated] Securities. In case any temporary or definitive [Subordinated] Security shall be mutilated, defaced, destroyed, lost or stolen, the Company in its discretion may execute and, upon the written request of any officer of the Company, the Trustee shall authenticate and delivery, a new [Subordinated] Security of the same series, maturity date, interest rate and original issue date, bearing a number or other distinguishing symbol not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced [Subordinated] Security, or in lieu of and in substitution for the [Subordinated] Security so destroyed, lost or stolen. In every case the applicant for a substitute [Subordinated] Security shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such [Subordinated] Security and of the ownership thereof, and in the case of mutilation or defacement shall surrender the [Subordinated] Security to the Trustee or such agent. If the Company becomes aware that such Security has been acquired by a bona fide purchaser, it shall notify the Trustee in writing.

Upon the issuance of any substitute [Subordinated] Security, 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) or its agent connected therewith. In case any [Subordinated] Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company may instead of issuing a substitute [Subordinated] Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced [Subordinated] Security, if the applicant for such payment shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as any of them may require to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee and any agent of the Company or the Trustee evidence to their satisfaction of the destruction, loss or theft of such [Subordinated] Security and of the ownership thereof.

Every substitute [Subordinated] Security of any series issued pursuant to the provisions of this Section by virtue of the fact that any such [Subordinated] Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen [Subordinated] Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this [Subordinated] Indenture equally and proportionately with any and all other [Subordinated] Securities of such series duly authenticated and delivered hereunder. All [Subordinated] Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced or destroyed, lost or stolen [Subordinated] Securities and shall preclude any and all other rights or remedies notwithstanding

any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.10. Cancellation and Destruction of Surrendered [Subordinated] Securities. All [Subordinated] Securities surrendered for payment, redemption, transfer, conversion or exchange, or for credit against any payment in respect of a sinking or analogous fund, if any, shall, if surrendered to the Company, the Trustee or any agent of the Company or of the Trustee, be delivered to the Trustee, and the same, together with [Subordinated] Securities surrendered to the Trustee for cancellation, shall be canceled by it and thereafter disposed of by it as directed by the Company, and no [Subordinated] Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this [Subordinated] Indenture. The Trustee shall destroy canceled [Subordinated] Securities in accordance with applicable laws and procedures, and deliver a certificate of destruction thereof to the Company. If the Company shall purchase or otherwise acquire any of the [Subordinated] Securities, however, such purchase or acquisition shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such [Subordinated] Securities unless and until the Company, at its option shall deliver or surrender the same to the Trustee for cancellation.

SECTION 2.11. Temporary [Subordinated] Securities. Pending the preparation of definitive [Subordinated] Securities of any series, the Company may execute and the Trustee shall authenticate and deliver temporary [Subordinated] Securities of such series which are printed, lithographed, typewritten or otherwise produced, in each case satisfactory to the Trustee. Temporary [Subordinated] Securities of any series shall be issuable substantially in the form of the definitive [Subordinated] Securities of such series but with such appropriate omissions, insertions, substitutions and other variations as the officers executing such [Subordinated] Securities may determine, as evidenced by their execution of such [Subordinated] Securities. Every such temporary [Subordinated] Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive [Subordinated] Securities. If temporary [Subordinated] Securities are issued, the Company will cause definitive [Subordinated] Securities to be prepared without unreasonable delay. After the preparation of definitive [Subordinated] Securities, the temporary [Subordinated] Securities of such series shall be exchangeable for definitive [Subordinated] Securities upon surrender of the temporary [Subordinated] Securities without charge to the Holder at the offices or agencies to be maintained by the Trustee as provided in Section 4.03 with respect to the [Subordinated] Securities of such series.

Upon surrender for cancellation of any one or more temporary [Subordinated] Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange for such temporary [Subordinated] Securities an equal aggregate principal amount of definitive [Subordinated] Securities of such series. Until so exchanged, the temporary [Subordinated] Securities of any series shall in all respects be entitled to the benefits of this [Subordinated] Indenture and interest thereon, when and as payable, shall be paid to the registered owners thereof.

SECTION 2.12. [Subordinated] Securities in Global Form.

(a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding [Subordinated] Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be held by the Trustee as custodian for the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: “ *Except as otherwise provided in Section 2.12 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository.* ”

(b) Notwithstanding the provisions of Section 2.05, the Global [Subordinated] Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.08, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Corporation or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the [Subordinated] Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, or if an Event of Default has occurred and is continuing and the Company has received a request from the Depository, this Section 2.10 shall no longer be applicable to the Securities of such series and the Company will execute and subject to Section 2.04, the Trustee will authenticate and deliver the [Subordinated] Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global [Subordinated] Security of such series in exchange for such Global [Subordinated] Security or [Subordinated] Securities upon the instruction of the Depository. In addition, the Company may at any time determine that the [Subordinated] Securities of any series shall no longer be represented by a Global [Subordinated] Security and that the provisions of this Section 2.12 shall no longer apply to the Securities of such series. In such event, the Company will execute and, subject to Section 2.04, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the [Subordinated] Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global [Subordinated] Security of such series in exchange for such Global [Subordinated] Security. Upon the exchange of the Global [Subordinated] Security for such [Subordinated] Securities in definitive registered form without coupons, in authorized denominations, the Global [Subordinated] Security shall be canceled by the Trustee.

Such [Subordinated] Securities in definitive registered form issued in exchange for the Global [Subordinated] Security pursuant to this Section 2.10(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or

indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debt Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

SECTION 2.13. CUSIP Numbers. The Company in issuing the [Subordinated] Securities may use “CUSIP” and “CINS” numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS 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 [Subordinated] Securities or as contained in any notice of redemption or exchange. The Company will promptly notify the Trustee of any change in the “CUSIP” and/or such other numbers.

ARTICLE THREE

REDEMPTION OF [SUBORDINATED] SECURITIES

SECTION 3.01. Applicability of Article. The provisions of this Article shall be applicable to the [Subordinated] Securities of any series which are redeemable before their Stated Maturity except as otherwise specified as contemplated by Section 2.03 for [Subordinated] Securities of such series.

SECTION 3.02. Notice of Redemption; Partial Redemptions. Notice of redemption to the Holders of Registered [Subordinated] Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing notice of such redemption by electronic transmission, first-class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of [Subordinated] Securities of such series at their last addresses as they shall appear upon the Register.

Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder of any [Subordinated] Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of such [Subordinated] Security of such series.

The notice of redemption to each such Holder shall specify the principal amount of each [Subordinated] Security of such series held by such Holder to be redeemed, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of such [Subordinated] Securities, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any [Subordinated] Security of a series is to be redeemed in part only the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such [Subordinated] Security, a new [Subordinated] Security or [Subordinated] Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of [Subordinated] Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request delivered to the Trustee at least five Business Days prior to the intended date of mailing to the Holders, by the Trustee in the name and at the expense of the Company.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.05), no later than 11:00 a.m. New York City time, an amount of money sufficient to redeem on the redemption date all the [Subordinated] Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. The Company will deliver to the Trustee at least 70 days prior to the date fixed for redemption, or such shorter period as shall be acceptable to the Trustee, an Officer's Certificate stating the aggregate principal amount of [Subordinated] Securities to be redeemed with a copy of the form on notice to the Holders setting forth the information required by this Section 3.02. In case of a redemption at the election of the Company prior to the expiration of any restriction on such redemption, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate stating that such restriction has been complied with.

If less than all the [Subordinated] Securities of a series are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, in its sole discretion, [Subordinated] Securities of such series to be redeemed in whole or in part. [Subordinated] Securities may be redeemed in part in multiples equal to the minimum authorized denomination for [Subordinated] Securities of such series or any multiple thereof. The Trustee shall promptly notify the Company in writing of the [Subordinated] Securities of such series selected for redemption and, in the case of any [Subordinated] Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this [Subordinated] Indenture, unless the context otherwise requires, all provisions relating to the redemption of [Subordinated] Securities of any series shall relate, in the case of any [Subordinated] Security redeemed or to be redeemed only in part, to the portion of the principal amount of such [Subordinated] Security which has been or is to be redeemed.

SECTION 3.03. Payment of [Subordinated] Securities Called for Redemption. If notice of redemption has been given as above provided, the [Subordinated] Securities or portions of [Subordinated] Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such [Subordinated] Securities at the redemption price, together with interest accrued to said date) interest on the [Subordinated] Securities or portions of [Subordinated] Securities so called for redemption shall cease to accrue, and, except as provided in Sections 7.05 and 11.04, such [Subordinated] Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this [Subordinated] Indenture, and the Holders thereof shall have no right in respect of such [Subordinated] Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such

[Subordinated] Securities at a place of payment specified in said notice, said [Subordinated] Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that payment of interest becoming due on or prior to the date fixed for redemption shall be payable to the Holder of such Registered [Subordinated] Securities registered as such on the relevant record date, subject to the terms and provisions of Section 2.03 and 2.07 hereof.

If any [Subordinated] Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount [Subordinated] Security) borne by such [Subordinated] Security.

Upon presentation of any [Subordinated] Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new [Subordinated] Security or [Subordinated] Securities of such series, of authorized denominations, in principal amount equal to the unredeemed portion of the [Subordinated] Security so presented.

SECTION 3.04. Exclusion of Certain [Subordinated] Securities From Eligibility for Selection for Redemption. [Subordinated] Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in an Officer's Certificate delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

ARTICLE FOUR

PARTICULAR COVENANTS OF THE COMPANY

SECTION 4.01. Payment of Principal of and Interest on [Subordinated] Securities. The Company covenants that it will duly and punctually pay or cause to be paid the principal of and any interest and premium on each of the [Subordinated] Securities in accordance with the terms of the [Subordinated] Securities and this [Subordinated] Indenture. Except with respect to any Global [Subordinated] Securities, if the [Subordinated] Securities of any series bear interest, each installment of interest on the [Subordinated] Securities of such series may, at the option of the Company, be paid by mailing a check or checks for such interest payable to the Person entitled thereto pursuant to Section 2.07 to the address of such Person as it appears on the Register of such series on the applicable Record Date for such interest payment. The interest, if any, on Registered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to or upon the written order of the Holders thereof and, at the option of the Company, may be paid by wire transfer or by mailing checks for such interest payable to or upon the written order of such Holders at their last addresses as they appear on the Register of the Company.

SECTION 4.02. Corporate Existence of the Company; Consolidation, Merger, Sale or Transfer. The Company covenants that so long as any of the [Subordinated] Securities are

Outstanding, it will maintain its existence, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Company may, without violating the covenants in this Section 4.02 contained, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, (i) shall be organized and existing under the laws of one of the States of the United States of America, (ii) assumes, if such entity is not the Company, all of the obligations of the Company hereunder and (iii) is not, after such transaction, otherwise in default under any provisions hereof.

SECTION 4.03. Maintenance of Offices or Agencies for Transfer, Registration, Exchange and Payment of [Subordinated] Securities. So long as any of the [Subordinated] Securities shall remain Outstanding, the Company covenants that it will cause the Trustee to maintain an office or agency in _____, where the [Subordinated] Securities may be presented for registration, exchange and transfer as in this [Subordinated] Indenture provided, and where notices and demands to or upon the Trustee in respect of the [Subordinated] Securities or of this [Subordinated] Indenture may be served, and where the [Subordinated] Securities may be presented for payment. In case the Trustee shall fail to maintain any such office or agency, presentations and demands may be made and notices may be served at the principal office of the Company.

The Company will give to the Trustee written notice of the location of each such office or agency and of any change of location thereof. In case the Company shall fail to maintain any agency required by this Section to be located in the _____, or shall fail to give such notice of the location or for any change in the location of any of the above agencies, presentations and demands may be made and notices may be served at the Principal Office of the Trustee.

The Company may from time to time designate one or more additional offices or agencies where the [Subordinated] Securities of a series may be presented for payment, where the [Subordinated] Securities of that series may be presented for exchange as provided in this [Subordinated] Indenture and pursuant to Section 2.04 and where the Registered [Subordinated] Securities of that series may be presented for registration of transfer as in this [Subordinated] Indenture provided, and the Company may from time to time rescind any such designation, as the Company may deem desirable or expedient; provided, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain the agencies provided for in this Section. The Company shall give to the Trustee prompt written notice of any such designation or rescission thereof.

SECTION 4.04. Appointment to Fill a Vacancy in the Office of Trustee. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, covenants that it will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee with respect to the Outstanding [Subordinated] Securities.

SECTION 4.05. Duties of Paying Agent. (c) If the Company shall appoint a Paying Agent other than the Trustee with respect to [Subordinated] Securities of any series, it will cause

such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.05 and Section 11.04,

(1) that it will hold all sums held by it as such agent for the payment of the principal of or interest, if any, on the [Subordinated] Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the [Subordinated] Securities of such series) in trust for the benefit of the Holders of the [Subordinated] Securities entitled to such principal or interest and will notify the Trustee of the receipt of sums to be so held,

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the [Subordinated] Securities of such series) to make any payment of the principal of or interest on the [Subordinated] Securities of such series when the same shall be due and payable, and

(3) that it will at any time during the continuance of any Event of Default, upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it.

(b) Whenever the Company shall have one or more Paying Agents with respect to the [Subordinated] Securities of any series, it will, prior to each due date of the principal of or any interest on the [Subordinated] Securities of such series, deposit with a Paying Agent of such series a sum sufficient to pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the Holders of [Subordinated] Securities entitled to such principal 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.

(c) If the Company shall act as its own Paying Agent with respect to the [Subordinated] Securities of any series, it will, on or before each due date of the principal of or interest on the [Subordinated] Securities of such series, set aside, segregate and hold in trust for the benefit of the Holders of the [Subordinated] Securities of such series a sum sufficient to pay such principal or interest so becoming due. The Company will promptly notify the Trustee of any failure to take such action.

(d) Anything in this Section 4.05 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this [Subordinated] Indenture with respect to one or more or all series of [Subordinated] Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such series by it, or any Paying Agent hereunder, as required by this Section 4.05, and such sums are to be held by the Trustee upon the trust herein contained.

SECTION 4.06. Notice of Default. The Company covenants that, as soon as is practicable but in no event later than twenty Business Days after the occurrence thereof, the Company will furnish the Trustee notice of any event which is an Event of Default or which with the giving of notice or the passage of time or both would constitute an Event of Default which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which the Company proposes to take with respect thereto.

SECTION 4.07. Maintenance of Properties. The Company will cause all properties used in or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment and will cause to be made all necessary 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 time except to the extent that the Company may be prevented from so doing by circumstances beyond its control; provided, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is, in the judgment of the Company desirable in the conduct of the business of the Company.

ARTICLE FIVE

[SUBORDINATED] SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 5.01. Company to Furnish Trustee Information as to the Names and Addresses of [Subordinated] Securityholders. The Company will furnish or cause to be furnished to the Trustee, not less than 45 days nor more than 60 days after each date (month and day) specified as an Interest Payment Date for the [Subordinated] Securities of the first series issued under this [Subordinated] Indenture (whether or not any [Subordinated] Securities of that series are then Outstanding), but in no event less frequently than semiannually, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, as to the names and addresses of the Holders of [Subordinated] Securities, obtained since the date as of which the next previous list, if any, was furnished, excluding from any such list the names and addresses received by the Trustee in its capacity as registrar (if so acting). Any such list may be dated as of a date not more than 15 days prior to the time such information is furnished and need not include information received after such date. However, if the Trustee is appointed as Registrar, the Company has no obligation to furnish the list of holders.

SECTION 5.02. Preservation of Information; Communication to [Subordinated] Securityholders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders of [Subordinated] Securities of each series (1) contained in the most recent list furnished to it as provided in Section 5.01, (2) received by the Trustee in the capacity of Paying Agent or registrar (if so acting) and (3) filed with the Trustee within the two preceding years as provided for in Section 5.04(c). The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) If three or more Holders of [Subordinated] Securities (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a [Subordinated] 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 of [Subordinated] Securities of any series or with Holders of all [Subordinated] Securities with respect to their rights under this [Subordinated] Indenture or under such

[Subordinated] 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:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02; or

(2) inform such applicants as to the approximate number of Holders of [Subordinated] Securities of such series or all [Subordinated] Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, and as to the approximate cost of mailing to such [Subordinated] Securityholders the form of proxy or other communications, 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 of the Holders of [Subordinated] Securities of such series, or all [Subordinated] Securities, as the case may be, whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, 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 interests of the Holders of [Subordinated] Securities of such series or all [Subordinated] Securities, as the case may be, 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 [Subordinated] Securityholders 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) Each and every Holder of the [Subordinated] Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent nor any registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of [Subordinated] Securities in accordance with the provisions of subsection (b) of this Section 5.02, 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 said subsection (b).

SECTION 5.03. Reports by Company. (a) The Company covenants and agrees to 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 such sections, then to 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.

(b) The Company covenants and agrees to 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 provided for in this [Subordinated] Indenture as may be required from time to time by such rules and regulations.

(c) The Company covenants and agrees to transmit to the Holders of [Subordinated] Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in subsection (c) of Section 5.04 with respect to reports pursuant to subsection (a) of said Section 5.04, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 5.03 as may be required by rules and regulations prescribed from time to time by the Commission. Delivery of reports, information and documents to the Trustee under this Section 5.03 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(d) The Company and any other obligor on the [Subordinated] Securities each covenant and agree to furnish to deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, from the principal executive officer, principal financial officer or principal accounting officer stating whether or not to the best knowledge of the signers thereof, the Company or Subsidiary of the Company is in default in the performance and observance of any of the terms, provisions and conditions of this [Subordinated] Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company or a Subsidiary of the Company in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 5.04. Reports by Trustee. (a) On or before the first _____ following the date of execution of this [Subordinated] Indenture, and on or before _____ in every year thereafter, if and so long as any [Subordinated] Securities are Outstanding hereunder, the Trustee shall transmit to the [Subordinated] Securityholders as hereinafter in this Section 5.04 provided, a brief report dated as of the preceding _____ with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 7.09, and its qualifications under Section 7.08;

(2) the creation of or any material change to a relationship specified in paragraph (1) through (10) of Section 7.08(d);

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the [Subordinated] Securities of any series, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to state such advances if such advances so remaining unpaid aggregate not more than one-half of one percent of the principal amount of the [Subordinated] Securities of such series Outstanding on the date of such report;

(4) the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the [Subordinated] Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4) or (6) of subsection (b) of Section 7.13;

(5) any change to the property and funds, if any, physically in the possession of the Trustee (as such) on the date of such report;

(6) any additional issue of [Subordinated] Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties under this [Subordinated] Indenture which it has not previously reported and which in its opinion materially affects the [Subordinated] Securities, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with the provisions of Section 6.10.

(b) The Trustee shall transmit to the [Subordinated] Securityholders, as hereinafter provided, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to the provisions of subsection (a) of this Section 5.04 (or if no such report has yet been so transmitted, since the date of execution of this [Subordinated] Indenture), for the reimbursement of which it claims or may claim a lien or charge prior to that of the [Subordinated] Securities of any series on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate ten percent or less of the principal amount of [Subordinated] Securities of such series Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) Reports pursuant to this Section 5.04 shall be transmitted by mail (i) to all Holders of [Subordinated] Securities of any series, as the names and addresses of such Holders shall appear upon the Register of the [Subordinated] Securities of such series, (ii) to such Holders of [Subordinated] Securities as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose and (iii) except in the case of reports pursuant to subsection (b) of this Section 5.04 to each Holder whose name and address are preserved at the time by the Trustee as provided in Section 5.02(a) hereof.

(d) A copy of each such report shall, at the time of such transmission to [Subordinated] Securityholders, be filed by the Trustee with each stock exchange upon which the [Subordinated] Securities of any series are listed and also with the Commission. The Company will notify the Trustee when and as the [Subordinated] Securities of any series become listed on any stock exchange.

ARTICLE SIX

REMEDIES OF THE TRUSTEE AND [SUBORDINATED] SECURITYHOLDERS ON EVENT OF DEFAULT

SECTION 6.01. Events of Default; Acceleration, Waiver of Default and Restoration of Position and Rights. The term “Event of Default” whenever used herein with respect to any particular series of [Subordinated] Securities shall mean any one of the following events:

(a) default in the payment of any installment of interest on any [Subordinated] Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days provided however, that an extension of one or more Interest Payment Dates by the Company in accordance with the provisions of any Supplemental [Subordinated] Indenture, shall not constitute an Event of Default; or

(b) default in the payment of all or any part of the principal of or any premium on any [Subordinated] Security of such series as and when the same shall become due and payable whether at maturity, by proceedings for redemption, by declaration or otherwise, provided however, that an extension of the Stated Maturity for payment of principal of [Subordinated] Securities of such series in accordance with the provisions of any Supplemental [Subordinated] Indenture, shall not constitute an Event of Default; or

(c) failure on the part of the Company to observe or perform in any material respect any other of the covenants or agreements on its part in the [Subordinated] Securities or in this [Subordinated] Indenture (including any Supplemental [Subordinated] Indenture or pursuant to any Officer’s Certificate, as contemplated by Section 2.03) specifically contained for the benefit of the Holders of the [Subordinated] Securities of such series, for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of not less than 25% in principal amount of the [Subordinated] Securities of such series and all other series so benefited (all series voting as one class) at the time Outstanding under this [Subordinated] Indenture a written notice specifying such failure and stating that such is a “Notice of Default” hereunder; or

(d) the entry by a court having jurisdiction in the premises of 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, if such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the Company's consent to the entry of an order for relief in any involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Company or for any substantial part of its property, or the making by the Company of any general assignment for the benefit of creditors, or its failure generally to pay its debts as they become due or the taking by the Company of any corporate action in furtherance of any of the foregoing; or

(f) any other Event of Default provided in the Officer's Certificate or Supplemental [Subordinated] Indenture under which such series of [Subordinated] is issued or in the form of [Subordinated] Security for such series.

If an Event of Default described in clause (a) or (b) shall have occurred and be continuing with respect to any one or more series of Outstanding [Subordinated] Securities, then and in each and every such case, unless the principal amount of all the [Subordinated] Securities of each series as to which there is an Event of Default shall have already become due and payable, either the Trustee or the Holders of not less than 25% in principal amount of the [Subordinated] Securities of such series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by [Subordinated] Securityholders) may declare the principal amount (or, if the [Subordinated] Securities of any such series are Original Issue Discount [Subordinated] Securities, such portion of the principal amount as may be specified in the terms of such series) of all the [Subordinated] Securities of such series, together with any accrued interest, to be due and payable immediately, and upon any such declaration the same shall be immediately due and payable, anything in this [Subordinated] Indenture or in the [Subordinated] Securities of such series contained to the contrary notwithstanding.

Except as otherwise provided in the terms of any series of [Subordinated] Securities pursuant to Section 2.03, if an Event of Default described in clause (c) or (f) above with respect to all series of [Subordinated] Securities then Outstanding, occurs and is continuing, then, and in each and every such case, unless the principal of all of the [Subordinated] Securities shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of all of the [Subordinated] Securities then Outstanding hereunder (treated as one class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the [Subordinated] Securities of any series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all of the [Subordinated] Securities then Outstanding, and the interest accrued thereon, if any, to be due and payable immediately, and upon such declaration, the same shall become immediately due and

payable. If an Event of Default described in clause (e) or (f) above occurs and is continuing, then the principal amount of all of the [Subordinated] Securities then Outstanding, and the interest accrued thereon, if any, shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

If an Event of Default described in clause (d) or (g) occurs and is continuing, which Event of Default is with respect to less than all series of [Subordinated] Securities then Outstanding, then, and in each and every such case, except for any series of [Subordinated] Securities the principal of which shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the [Subordinated] Securities of each such affected series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all Securities of such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration, the same shall become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal amount (or, if the [Subordinated] Securities are Original Issue Discount [Subordinated] Securities, such portion of the principal as may be specified in the terms thereof of the [Subordinated] Securities of any one or more series (or of all the [Subordinated] Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the [Subordinated] Securities of such series (or upon all the [Subordinated] Securities, as the case may be) and the principal of any and all [Subordinated] Securities of such series (or of any and all the [Subordinated] Securities, as the case may be) which shall have become due otherwise than by declaration (with interest on overdue installments of interest to the extent permitted by law and on such principal at the rate or rates of interest borne by, or prescribed therefor in the [Subordinated] Securities of such series to the date of such payment or deposit) and interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series (or at the respective rates of interest or Yields to Maturity of all the Securities, as the case may be) to the date of such payment or deposit; and the amounts payable to the Trustee under Section 7.06 and any and all defaults under the [Subordinated] Indenture with respect to [Subordinated] Securities of such series (or all [Subordinated] Securities, as the case may be), other than the non-payment of principal of and any accrued interest on [Subordinated] Securities of such series (or any [Subordinated] Securities, as the case may be) which shall have become due by declaration shall have been cured, remedied or waived as provided in Section 6.09 — then and in every such case the Holders of a majority in principal amount of the [Subordinated] Securities of such series (or of all the [Subordinated] Securities, as the case may be) then Outstanding (such series or all series voting as one class if more than one series are so entitled) by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

For all purposes under this [Subordinated] Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

In case the Trustee shall have proceeded to enforce any right under this [Subordinated] Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the Holders of the [Subordinated] Securities of such series (or of all the [Subordinated] Securities, as the case may be) shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee and the Holders of the [Subordinated] Securities of such series (or of all the [Subordinated] Securities, as the case may be) shall continue as though no such proceedings had been taken.

SECTION 6.02. Covenant of Company to Pay to Trustee Whole Amount Due on [Subordinated] Securities on Default in Payment of Interest or Principal. The Company covenants that:

(a) in case default shall be made in the payment of any installment of interest on any of the [Subordinated] Securities of any series as and when the same shall become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental [Subordinated] Indenture, and such default shall have continued for a period of 30 days;

(b) in case default shall be made in the payment of all or any part of the principal of any of the [Subordinated] Securities of any series when the same shall have become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental [Subordinated] Indenture, whether at the Stated Maturity of such series or by any call for redemption or by declaration of acceleration or otherwise; or

(c) upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of the [Subordinated] Securities of such series, the whole amount that then shall have become due and payable on all such [Subordinated] Securities of such series for principal (and any premium) and interest together with interest upon the overdue principal and installments of interest (to the extent permitted by law) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount [Subordinated] Securities), or prescribed therefor in, the [Subordinated] Securities of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expense of collection, including a reasonable compensation to the Trustee, its agents and counsel, and any expenses or liabilities incurred, and all advances made, by the Trustee hereunder other than through its negligence or bad faith.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon such [Subordinated] Securities, and collect in the manner provided by law out of the property of the Company or any other obligor upon such [Subordinated] Securities wherever situated the moneys adjudged or decreed to be payable.

If an Event of Default with respect to [Subordinated] 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 [Subordinated] 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 [Subordinated] Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 6.03. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Company or any other obligor upon the [Subordinated] Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the [Subordinated] Securities of any series 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 or interest) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the [Subordinated] Securities (or, if the [Subordinated] Securities are Original Issue Discount [Subordinated] Securities, such portion of the principal amount as may be specified in the terms of such [Subordinated] 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

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the 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 7.06.

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 [Subordinated] 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 6.04. Trustee May Enforce Claims Without Possession of [Subordinated] Securities. All rights of action and claims under this [Subordinated] Indenture or the [Subordinated] Securities of any series may be prosecuted and enforced by the Trustee to the fullest extent permitted by law without the possession of any of the [Subordinated] Securities of any series 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 [Subordinated] Securities in respect of which such judgment has been recovered.

SECTION 6.05. Application of Moneys Collected by Trustee. Any moneys collected by the Trustee pursuant to Section 6.02 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several [Subordinated] Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due to the Trustee under Section 7.06;

SECOND: In case the principal of the Outstanding [Subordinated] Securities in respect of which moneys have been collected shall not have become due and be unpaid, to the payment of any interest on such [Subordinated] Securities, in the order of the maturity of the installments of such interest, with interest upon the overdue installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount [Subordinated] Securities) of such [Subordinated] Securities or prescribed therefor therein) such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Outstanding [Subordinated] Securities in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such [Subordinated] Securities for principal and interest, if any, with interest on the overdue principal and any installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount [Subordinated] Securities), or prescribed therefor in, such [Subordinated] Securities; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon such [Subordinated] Securities, then to the payment of such principal and interest or Yield to Maturity, without preference or priority of principal over interest or Yield to Maturity, or of interest or Yield to Maturity over principal, or of any installment of interest over any other installment of interest, or of any [Subordinated] Security over any other [Subordinated] Security, ratably to the aggregate of such principal and accrued and unpaid interest or Yield to Maturity; and

FOURTH: To the payment of the remainder, with appropriate interest to the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 6.06. Limitation on Suits by Holders of [Subordinated] Securities. No Holder of any [Subordinated] Security of any series shall have any right by virtue or by availing of any provision of this [Subordinated] Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this [Subordinated] Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of a continuing Event of Default, as hereinbefore provided, and unless also the Holders of not less than 25% in principal amount of the [Subordinated] Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby (including the reasonable fees of counsel for the Trustee), and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the outstanding debt securities pursuant to this Section 6.06; it being understood and intended, and being expressly covenanted by the taker and Holder of every [Subordinated] Security with every other taker and Holder and the Trustee, that no one or more Holders of [Subordinated] Securities of any series shall have any right in any manner whatever by virtue or by availing of any provision of this [Subordinated] Indenture to affect, disturb or prejudice the rights of the Holders of any other of such [Subordinated] Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this [Subordinated] Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of [Subordinated] Securities of the applicable series. For the protection and enforcement of the provisions of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions in this [Subordinated] Indenture, the right of any Holder of any [Subordinated] Security to receive payment of the principal of and interest on such [Subordinated] Security on or after the respective due dates expressed in such [Subordinated] Security (or, in the case of redemption, on or after the date fixed for redemption), or to institute suit for the enforcement of any such payment on or after such respective dates shall not be impaired or affected without the consent of such Holder.

SECTION 6.07. Rights and Remedies Cumulative. All powers and remedies given by this Article Six to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this [Subordinated] Indenture, and no delay or omission of the Trustee or of any Holder of any of the [Subordinated] Securities to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence

therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. 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 6.08. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any [Subordinated] Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Subject to the provisions of Section 6.06, every right and remedy given by this Article Six 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 6.09. Control by Holders; Waiver of Past Defaults. The Holders of a majority in principal amount of the [Subordinated] Securities of all series (voting as one class) at the time Outstanding (determined as provided in Section 8.04) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that, subject to Section 7.01 the Trustee shall have the right to decline to follow any such direction if the Trustee in reliance upon an Opinion of Counsel determines that the action so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceedings so directed would be illegal or involve it in personal liability or be unduly prejudicial to the rights of Holders not parties to such direction, and provided further that nothing in this [Subordinated] Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the Holders.

The Company may set a special record date for purposes of determining the identity of the Holders of [Subordinated] Securities entitled to vote or consent to any action by vote or consent authorized or permitted by this Section 6.09. Such record date shall be the later of 15 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee pursuant to Section 5.01 of this [Subordinated] Indenture prior to such solicitation.

The Holders of not less than a majority in principal amount of the [Subordinated] Securities of any series at the time Outstanding (determined as provided in Section 8.04) may on behalf of the Holders of all the [Subordinated] Securities of such series waive any past Event of Default with respect to such series and its consequences (subject to Section 6.02), except a continuing Event of Default specified in Section 6.01(a), (b) or (c), or in respect of a covenant or provision of this [Subordinated] Indenture which under Article Ten cannot be modified or amended without the consent of the Holder of each [Subordinated] Security so affected. Upon any such waiver, the Company, the Trustee and the Holders of the [Subordinated] Securities of such series shall be restored to their former positions and rights hereunder, respectively, and such Event of Default shall be deemed to have been cured and not continuing for every purpose of this [Subordinated] Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 6.10. Trustee to Give Notice of Defaults Known to it, but May Withhold in Certain Circumstances. The Trustee shall, within 90 days after the occurrence of a default with respect to the [Subordinated] Securities of any series, give notice of all defaults with respect to that series known to the Trustee to all Holders of [Subordinated] Securities of such series in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless in each case such defaults shall have been cured before the mailing or publication of such notice (the term “default” for the purpose of this Section being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided, that, except in the case of default in the payment of the principal of or interest on any of the [Subordinated] 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 trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the [Subordinated] Securityholders of such series.

SECTION 6.11. Requirement of an Undertaking to Pay Costs in Certain Suits Under the [Subordinated] Indenture or Against the Trustee. All parties to this [Subordinated] Indenture agree, and each Holder of any [Subordinated] Security by such Holder’s 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 [Subordinated] Indenture, or in any suit against the Trustee for any action taken 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 6.11 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder of [Subordinated] Securities of any series, or group of such Holders, holding in the aggregate more than ten percent in principal amount of the [Subordinated] Securities of such series Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any interest or premium on any [Subordinated] Security, on or after the due date expressed in such [Subordinated] Security or for such interest (or in the case of any redemption, on or after the dated fixed for redemption).

SECTION 6.12. 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 hereinafter 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 they 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.

ARTICLE SEVEN

CONCERNING THE TRUSTEE

SECTION 7.01. Certain Duties and Responsibilities of Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing, remedying or waiving of all Events of

Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this [Subordinated] Indenture. In case an Event of Default has occurred (which has not been cured, remedied or waived), the Trustee shall exercise such of the rights and powers vested in it by this [Subordinated] Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

No provision of this [Subordinated] 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, provided, however, that:

(a) prior to the occurrence of an Event of Default and after the curing, remedying or waving of all Events of Default which may have occurred:

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

(2) 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 [Subordinated] 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 [Subordinated] Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein); and;

(3) this Subsection shall not be construed to limit the effect of the first paragraph and the second to last paragraph of this Section;

(b) 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; and

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of [Subordinated] Securities pursuant to Section 6.09 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 [Subordinated] Indenture.

None of the provisions contained in this [Subordinated] Indenture shall require the Trustee to expend or risk its own funds or otherwise incur 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 is reasonable

ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 7.02. Certain Rights of Trustee. Except as otherwise provided in Section 7.01:

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

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof shall be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution;

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

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

(e) the Trustee shall not be liable for any action taken or omitted 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 [Subordinated] Indenture;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document, unless requested in writing so to do by the Holders of [Subordinated] Securities pursuant to Section 6.09; provided, however, that if the payment within a reasonable time to the Trustee of the costs, 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 afforded to it by the terms of this [Subordinated] Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to such proceeding; and provided further, that nothing in this subsection (f) shall require the Trustee to give the [Subordinated] Securityholders any notice other than that required by Section 6.10. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be reimbursed by the Company upon demand;

(g) 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;

(h) the Trustee shall be under no responsibility for the approval by it in good faith of any expert for any of the purposes expressed in this [Subordinated] Indenture;

(i) the Trustee shall not be deemed to have notice or be charged with knowledge of any default (within the meaning of Section 602) or Event of Default with respect to the Securities of any series for which it is acting as Trustee unless written notice of such default or Event of Default, as the case may be, is received by the Trustee at the Corporate Trust Office of the Trustee from the Company, any other obligor upon such Securities or by any Holder of such Securities, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any persons authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the permissive right of the Trustee hereunder to take or omit to take any action shall not be construed as a duty; and

(m) anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit), even if the Company has been advised as to the likelihood of such loss or damage and regardless of the form of action.

SECTION 7.03. Trustee Not Responsible for Recitals or Application of Proceeds. The recitals contained herein and in the [Subordinated] Securities (other than the certificate of authentication on the [Subordinated] Securities) shall be taken as the statements of the Company, 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 [Subordinated] Indenture or of the [Subordinated] Securities. The Trustee shall not be accountable for the use or application by the Company of any of the [Subordinated] Securities or of the proceeds thereof.

SECTION 7.04. Trustee May Own [Subordinated] Securities. The Trustee, any Paying Agent, registrar or any agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of [Subordinated] Securities with the same rights it would have if it were not Trustee, Paying Agent, registrar or such other agent.

SECTION 7.05. Moneys Received by Trustee to be Held in Trust . Moneys held by the Trustee in trust need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 7.06. Trustee Entitled to Compensation, Reimbursement and Indemnity . The Company agrees to pay to the Trustee from time to time reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of any express trust), and 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 connection with the acceptance or administration of its trust under this [Subordinated] 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. The Company also agrees to indemnify the Trustee and its officers, directors, agents and employees for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee and its officers, directors, agents and employees shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this [Subordinated] Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be secured by a lien prior to that of the [Subordinated] Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest or redemption premium on particular [Subordinated] Securities.

In addition and without prejudice to the rights provided to the Trustee under any of the provisions of this Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 601(e) or Section 601(f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal and State bankruptcy, insolvency or other similar law.

SECTION 7.07. Right of Trustee to Rely on Officer's Certificate Where No Other Evidence Specifically Prescribed . Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this [Subordinated] Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action 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 Officer's Certificate of the Company or an Opinion of Counsel or both delivered to the Trustee, and such Officer's Certificate or Opinion of Counsel, 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, suffered or omitted by it under the provisions of this [Subordinated] Indenture upon the faith thereof.

SECTION 7.08. Disqualification; Conflicting Interest . If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall eliminate such interest, apply to the Commission for permission to continue as trustee (if any of the Securities are registered pursuant to the Securities Act) or, resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee, by virtue of its capacity as Trustee of the Securities of any series shall not be deemed to have a conflicting interest arising from its capacity as trustee in respect of the Securities of any other series issued under this Indenture. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

SECTION 7.09. Requirements for Eligibility of Trustee . There shall always be at least one Trustee hereunder. The Trustee hereunder shall at all times be a Company organized and doing business as a commercial bank under the laws of the United States of America or any state thereof or of the District of Columbia or a Company or other Person permitted to act as a trustee by the Commission and, in each case, authorized under such laws to exercise corporate trust powers, having (or, in the case of a subsidiary of a bank holding company, its bank holding company parent shall have) a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State or District of Columbia authority. If such Company or bank holding company parent 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, the combined capital and surplus of such Company or bank holding company parent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor on the [Subordinated] Securities or Person directly or indirectly controlling, controlled by or under common control with such obligor shall serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in this Article Seven.

SECTION 7.10. Resignation and Removal of Trustee; Appointment of Successor .

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

The Trustee, may resign at any time with respect to the [Subordinated] Securities of one or more series of by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 7.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the Trustee's receipt of such notice of removal, the departing Trustee may, at the expense of the Company, petition

any court of competent jurisdiction for the appointment of a successor Trustee with respect to the [Subordinated] Security of such series.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of subsection (a) of Section 7.08 after written request therefor by the Company or by any [Subordinated] Securityholder who has been a bona fide Holder of a [Subordinated] Security or [Subordinated] Securities of the applicable series for at least six months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such [Subordinated] Securityholder; or

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

(4) the Company shall determine that the Trustee has failed to perform its obligations under this [Subordinated] Indenture in any material respect, then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument executed by an authorized officer of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any [Subordinated] Securityholder who has been a bona fide Holder of a [Subordinated] Security or [Subordinated] Securities of the affected series for at least six months may, on such Person's behalf and on behalf of 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.

(c) The Holders of a majority in principal amount of the [Subordinated] Securities Outstanding (determined as provided in Section 8.04) may at any time remove the Trustee and appoint a successor trustee by written instrument or instruments signed by such Holders or their attorneys-in-fact duly authorized, or by the affidavits of the permanent chairman and secretary of a meeting of the [Subordinated] Securityholders evidencing the vote upon a resolution or resolutions submitted thereto with respect to such removal and appointment (as provided in Article Nine), and by delivery thereof to the Trustee so removed, to the successor trustee and to the Company.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

SECTION 7.11. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 7.10 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 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 of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers with respect to the trustee so ceasing to act. Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming 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 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

SECTION 7.12. Successor to Trustee by Merger, Consolidation or Succession to Business. Any Company into which the Trustee may be merged or converted or with which it may be consolidated, or any Company resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Company succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of the trust created by this Indenture), shall be the successor of the Trustee hereunder, provided such Company shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, 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 trusts created by this [Subordinated] Indenture any of the [Subordinated] Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such [Subordinated] Securities so authenticated; and in case at that time any of the [Subordinated] Securities shall not have been authenticated, any successor to the Trustee may authenticate such [Subordinated] Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the [Subordinated] Securities or in this [Subordinated] Indenture provided that the certificate of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate [Subordinated] Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 7.13. Preferential Collection of Claims Against Company. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the [Subordinated] Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

SECTION 7.14. Appointment of Authenticating Agent . As long as any [Subordinated] Securities of a series remain Outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Company an authenticating agent (the “ *Authenticating Agent* ”) which shall be authorized to act on behalf of the Trustee to authenticate [Subordinated] Securities, including [Subordinated] Securities issued upon exchange, registration of transfer, partial redemption or pursuant to Section 2.09. [Subordinated] Securities of each such series authenticated by such Authenticating Agent shall be entitled to the benefits of this [Subordinated] Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this [Subordinated] Indenture to the authentication and delivery of [Subordinated] Securities of any series by the Trustee or to 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 for such series and a Certificate of Authentication executed on behalf of the Trustee by such Authenticating Agent. Such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having (or in the case of a subsidiary of a bank holding company, its bank holding company parent shall have) a combined capital and surplus of at least \$45,000,000 (determined as provided in Section 7.09 with respect to the Trustee) and subject to supervision or examination by Federal or State authority.

Any corporation into which any 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 any Authenticating Agent (including the agency contemplated by this Indenture) shall be a party, or any corporation succeeding to the corporate agency business of any Authenticating Agent, shall continue to be the authenticating Agent with respect to all series of [Subordinated] Securities for which it served as Authenticating Agent without the execution or filing of any paper or any further act on the part of the Trustee or such Authenticating Agent. Any Authenticating Agent may at any time, and if it shall cease to be eligible shall, resign by giving written notice of resignation to the Trustee and to the Company.

Upon receiving such a notice of resignation or upon such a termination, or in case in any time any Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 7.14 with respect to one or more series of [Subordinated] Securities, the Trustee shall upon receipt of a Company Order appoint a successor Authenticating Agent and the Company shall provide notice of such appointment to all Holders of [Subordinated] Securities of such series in the manner and to the extent provided in Section 13.02. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent. The Company agrees to pay to the Authenticating Agent for such series from time to time reasonable compensation. The Authenticating Agent for the [Subordinated] Securities of any series shall have no responsibility or liability for any action taken by it as such at the direction of the Trustee.

If an appointment is made with respect to one or more series pursuant to this Section, the [Subordinated] Securities of such series may have endorsed thereon, in addition to the Trustee’s

certificate of authentication, an alternative certificate of authentication substantially in the following form:

This is one of the [Subordinated] Securities described in the within-mentioned [Subordinated] Indenture.

_____, as Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

Sections 7.02, 7.03, 7.04, 7.06 and 8.03 shall be applicable to any Authenticating Agent.

ARTICLE EIGHT

CONCERNING THE [SUBORDINATED] SECURITYHOLDERS

SECTION 8.01. Evidence of Action by [Subordinated] Securityholders. Whenever in this [Subordinated] Indenture it is provided that the Holders of a specified percentage in principal amount of the [Subordinated] Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such [Subordinated] Securityholders in Person or by agent or proxy appointed in writing, or (b) by the record of such Holders of [Subordinated] Securities voting in favor thereof at any meeting of such [Subordinated] Securityholders duly called and held in accordance with the provisions of Article Nine, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such [Subordinated] Securityholders.

SECTION 8.02. Proof of Execution of Instruments and of Holding of [Subordinated] Securities. Subject to the provisions of Sections 7.01, 7.02 and 9.05, proof of the execution of any instrument by a [Subordinated] Securityholder or such Holder's agent or proxy and proof of the holding by any Person of any of the [Subordinated] Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee;

(b) The ownership of [Subordinated] Securities of any series shall be proved by the Register of such [Subordinated] Securities of such series, or by certificates of the [Subordinated] Security registrar or registrars thereof.

The Trustee shall not be bound to recognize any Person as a [Subordinated] Securityholder unless and until such Person's title to the [Subordinated] Securities held by it is proved in the manner in this Article Eight provided.

The record of any [Subordinated] Securityholders' meeting shall be proved in the manner provided in Section 9.06.

The Trustee may accept such other proof or require such additional proof of any matter referred to in this Section 8.02 as it shall deem reasonable.

SECTION 8.03. Who May be Deemed Owners of [Subordinated] Securities . Prior to due presentment for transfer of any [Subordinated] Security, the Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name such [Subordinated] Security shall be registered upon the Register of [Subordinated] Securities of the series of which such [Subordinated] Security is a part as the absolute owner of such [Subordinated] Security (whether or not such [Subordinated] Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest, subject to the provisions of this [Subordinated] Indenture, on such [Subordinated] Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Holder for the time being, or upon such Holder's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability of moneys payable upon any such [Subordinated] Security.

If the [Subordinated] Securities of any series are issued in the form of one or more Global [Subordinated] Securities, the Depository therefor may grant proxies to Persons having a beneficial ownership in such Global [Subordinated] Security or [Subordinated] Securities for purposes of voting or otherwise responding to any request for consent, waiver or other action which the Holder of such Registered [Subordinated] Security is entitled to grant or take under this [Subordinated] Indenture and the Trustee shall accept such proxies for the purposes granted; provided that neither the Trustee nor the Company shall have any obligation with respect to the grant of or solicitation by the Depository of such proxies.

SECTION 8.04. [Subordinated] Securities Owned by the Company or Controlled or Controlling Persons Disregarded for Certain Purposes . In determining whether the Holders of the requisite principal amount of [Subordinated] Securities have concurred in any demand, direction, request, notice, vote, consent, waiver or other action under this [Subordinated] Indenture, [Subordinated] Securities which are owned by the Company or any other obligor on the [Subordinated] Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the [Subordinated] Securities shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided that for the purposes of determining whether the Trustee shall be protected in relying on any such demand, direction, request, notice, vote, consent, waiver or other action, only [Subordinated] Securities which a Responsible Officer of the Trustee assigned to its Principal Office knows are so owned shall be so disregarded. [Subordinated] Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 8.04, if the

pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such [Subordinated] Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor.

Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all [Subordinated] Securities, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on the [Subordinated] Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the [Subordinated] Securities; and, subject to the provisions of Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all [Subordinated] Securities not listed therein are Outstanding for the purpose of any such determination.

SECTION 8.05. Instruments Executed by [Subordinated] Securityholders Bind Future Holders. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage in principal amount of the [Subordinated] Securities specified in this [Subordinated] Indenture in connection with such action, any Holder of a [Subordinated] Security which is shown by the evidence to be included in the [Subordinated] Securities the Holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such [Subordinated] Security. Except as aforesaid any such action taken by the Holder of any [Subordinated] Security and any direction, demand, request, notice, waiver, consent, vote or other action of the Holder of any [Subordinated] Security which by any provisions of this [Subordinated] Indenture is required or permitted to be given shall be conclusive and binding upon such Holder and upon all future Holders and owners of such [Subordinated] Security, and of any [Subordinated] Security issued in lieu thereof, irrespective of whether any notation in regard thereto is made upon such [Subordinated] Security. Any action taken by the Holders of the percentage in principal amount of the [Subordinated] Securities of any or all series specified in this [Subordinated] Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all of the [Subordinated] Securities of such series subject, however, to the provisions of Section 7.01.

ARTICLE NINE

[SUBORDINATED] SECURITYHOLDERS' MEETINGS

SECTION 9.01. Purposes for Which Meetings May be Called. A meeting of Holders of [Subordinated] Securities of any or all series may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

(a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders of [Subordinated] Securities of any or all series, as the case may be, pursuant to any of the provisions of Article Six;

(b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article Seven;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified principal amount of the [Subordinated] Securities of any or all series, as the case may be, under any other provision of this [Subordinated] Indenture or under applicable law.

SECTION 9.02. Manner of Calling Meetings. The Trustee may at any time call a meeting of [Subordinated] Securityholders to take any action specified in Section 9.01, to be held at such time and at such place in The City of New York, New York, or such other city as the Trustee shall determine. Notice of every meeting of [Subordinated] Securityholders, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed not less than 20 nor more than 60 days prior to the date fixed for the meeting.

SECTION 9.03. Call of Meeting by the Company or [Subordinated] Securityholders. In case at any time the Company pursuant to a resolution of its Board of Directors, or the Holders of not less than ten percent in principal amount of the [Subordinated] Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of Holders of [Subordinated] Securities of any or all series, as the case may be, to take any action authorized in Section 9.01 by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request, then the Company or such Holders of [Subordinated] Securities in the amount above specified may determine the time and place in the City and County of _____ for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing (and publishing, if required) notice thereof as provided in Section 9.02.

SECTION 9.04. Who May Attend and Vote at Meetings. To be entitled to vote at any meeting of [Subordinated] Securityholders a Person shall (a) be a Holder of one or more [Subordinated] Securities with respect to which the meeting is being held; or (b) be a Person appointed by an instrument in writing as proxy by such Holder of one or more [Subordinated] Securities. The only Persons who shall be entitled to be present or to speak at any meeting of [Subordinated] Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.05. Regulations May be Made by Trustee; Conduct of the Meeting; Voting Rights — Adjournment. Notwithstanding any other provisions of this [Subordinated] Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of [Subordinated] Securityholders, in regard to proof of the holding of [Subordinated] Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulations, the holding of [Subordinated] Securities

shall be proved in the manner specified in Section 8.02. and the appointment of any proxy shall be proved in the manner specified in said Section 8.02; provided, however, that such regulations may provide that written instruments appointing proxies regular on their face, may be presumed valid and genuine without the proof hereinabove or in said Section 8.02 specified.

The Trustee shall by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by [Subordinated] Securityholders as provided in Section 9.03, in which case the Company or the [Subordinated] Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.04, at any meeting each [Subordinated] Securityholder or proxy shall be entitled to one vote for each \$1,000 principal amount (in the case of Original Issue Discount [Subordinated] Securities, such principal amount shall be equal to such portion of the principal amount as may be specified in the terms of such series) of [Subordinated] Securities held or represented by such Holder; provided, however, that no vote shall be cast or counted at any meeting in respect of any [Subordinated] Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of [Subordinated] Securities held by such Person or instruments in writing as aforesaid duly designating such Person as the Person to vote on behalf of other [Subordinated] Securityholders. Any meeting of [Subordinated] Securityholders duly called pursuant to the provisions of Section 9.02 or 9.03 may be adjourned from time to time, and the meeting may be held so adjourned without further notice.

At any meeting of [Subordinated] Securityholders, the presence of Persons holding or representing [Subordinated] Securities in principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the Persons holding or representing a majority in principal amount of the [Subordinated] Securities represented at the meeting may adjourn such meeting with the same effect for all intents and purposes, as though a quorum had been present.

SECTION 9.06. Manner of Voting at Meetings and Record to be Kept . The vote upon any resolution submitted to any meeting of [Subordinated] Securityholders shall be by written ballots on which shall be subscribed the signatures of the Holders of [Subordinated] Securities or of their representatives by proxy and the principal amount or principal amounts of the [Subordinated] Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of [Subordinated] Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount or principal amounts of the [Subordinated] Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of

the permanent chairman and secretary of the meeting and one copy thereof shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 9.07. Exercise of Rights of Trustee and [Subordinated] Securityholders Not to be Hindered or Delayed. Nothing in this Article Nine contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of [Subordinated] Securityholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrances or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the [Subordinated] Securityholders under any of the provisions of this [Subordinated] Indenture or of the [Subordinated] Securities.

ARTICLE TEN

SUPPLEMENTAL [SUBORDINATED] INDENTURES

SECTION 10.01. Purposes for Which Supplemental [Subordinated] Indentures May be Entered into Without Consent of [Subordinated] Securityholders. Without the consent of the Holders of any [Subordinated] Securities, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for one or more of the following purposes:

(a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the [Subordinated] Securities of one or more series any property or assets;

(b) if deemed appropriate by the Company or required by law, to evidence the succession of another Company to the Company or successive successions and the assumption by the successor Company of the covenants, agreements and obligations of the Company pursuant to Article Four hereof;

(c) to add to the covenants of the Company such further covenants, restrictions or conditions as its Board of Directors and the Trustee shall consider to be for the protection of the Holders of all or any series of [Subordinated] Securities (and if such covenants, restrictions or conditions are to be for the benefit of less than all series of [Subordinated] Securities, stating that such covenants, restrictions or conditions are expressly being included solely for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions an Event of Default permitting the enforcement of all or any of the several remedies provided in this [Subordinated] Indenture as herein set forth; provided, however, that in respect to any such additional covenant, restriction or condition such Supplemental [Subordinated] 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;

(d) to add or change any of the provisions of this [Subordinated] Indenture to such extent as shall be necessary to facilitate the issuance of [Subordinated] Securities in (i) global form or (ii) bearer form, registerable or not registerable as to principal or principal and interest, and with or without coupons;

(e) to change or eliminate any of the provisions of this [Subordinated] Indenture; provided, however, that any such change or elimination shall become effective only when there is no [Subordinated] Security of any series Outstanding created prior to the execution of such Supplemental [Subordinated] Indenture which is entitled to the benefit of such provision;

(f) to establish the form or terms of [Subordinated] Securities of any series as permitted by Sections 2.01 and 2.03;

(g) to appoint, at the request of the Trustee, a successor Trustee for a particular series of [Subordinated] Securities to act as such pursuant to the provisions of this [Subordinated] Indenture and to add to or change the provisions of this [Subordinated] Indenture to such extent as shall be necessary to facilitate the performance of the duties of such trustee; and

(h) to cure any ambiguity or to correct or supplement any provisions contained herein or in any Supplemental [Subordinated] Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental [Subordinated] Indenture, or to make such other provisions in regard to matters or questions arising under this [Subordinated] Indenture or any Supplemental [Subordinated] Indenture which shall not adversely affect the interests of the Holders of the [Subordinated] Securities.

SECTION 10.02. Modification of [Subordinated] Indenture With Consent of Holders of [Subordinated] Securities. With the consent (evidenced as provided in Section 8.01) of the Holders of not less than a majority in principal amount of the [Subordinated] Securities of all series at the time Outstanding (determined as provided in Section 8.04) affected by such Supplemental [Subordinated] Indenture (voting as one class), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this [Subordinated] Indenture or of any Supplemental [Subordinated] Indenture or of modifying in any manner the rights of the Holders of the [Subordinated] Securities of each such series; provided, however, that no such Supplemental [Subordinated] Indenture shall, without the consent of the Holders of each Outstanding [Subordinated] Security affect thereby:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any [Subordinated] Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount [Subordinated] Security or any other [Subordinated] Security which would be due and payable upon a declaration of acceleration of the Stated Maturity thereof pursuant to Section 6.01, or change any place of payment where, or the coin or currency in which, any [Subordinated] Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or,

in the case of redemption, on or after the date fixed for redemption), or modify the provisions of this [Subordinated] Indenture with respect to this subordination of the [Subordinated] Securities in a manner adverse to the Holders;

(b) reduce the percentage in principal amount of the Outstanding [Subordinated] Securities the consent of the Holders of which is required for any such Supplemental [Subordinated] Indenture, or the consent of the Holders of which is required for any waiver (of compliance with certain provisions of this [Subordinated] Indenture or certain defaults hereunder and their consequences) provided for in this [Subordinated] Indenture;

(c) change the time of payment or reduce the amount of any minimum sinking account or fund payment; or

(d) modify any of the provisions of this Section 10.02, except to increase any such percentage or to provide that certain other provisions of this [Subordinated] Indenture cannot be modified or waived without the consent of the Holder of each [Subordinated] Security affected thereby.

A supplemental indenture which changes or eliminates any covenant or other provision of this [Subordinated] Indenture which has expressly been included solely for the benefit of one or more particular series of [Subordinated] Securities, or which modifies the rights of Holders of [Subordinated] Securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this [Subordinated] Indenture of the Holders of [Subordinated] Securities of any other series.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to a Company Order) certified by the secretary or an assistant secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Holders of the [Subordinated] Securities as aforesaid and other documents, if any, required by Section 8.01, 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 [Subordinated] 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 Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions to this Section, the Trustee shall give notice thereof to the Holders of then Outstanding Registered [Subordinated] Securities of each series affected thereby, by mailing a notice thereof by first-class mail to such Holders at their addresses as they shall appear on the Security Register and in each case such notice shall set forth in general terms the substance of such

supplemental indenture. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 10.03. Effect of Supplemental [Subordinated] Indentures. Upon the execution of any Supplemental [Subordinated] Indenture pursuant to the provisions of this Article Ten, this [Subordinated] Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this [Subordinated] Indenture of the Trustee, the Company and the Holders of [Subordinated] 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 [Subordinated] Indenture shall be and be deemed to be part of the terms and conditions of this [Subordinated] Indenture for any and all purposes.

The Trustee shall be entitled to receive, and subject to the provisions of Section 7.01 shall be entitled to rely upon, an Opinion of Counsel as conclusive evidence that any such Supplemental [Subordinated] Indenture complies with the provisions of this Article Ten and that the [Subordinated] Securities affected by the Supplemental [Subordinated] Indenture, when such [Subordinated] Securities are authenticated and delivered by the Trustee and executed and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will be valid and binding obligations of the Company, except as any rights thereunder may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equity principles.

SECTION 10.04. [Subordinated] Securities May Bear Notation of Changes by Supplemental [Subordinated] Indentures. [Subordinated] Securities authenticated and delivered after the execution of any Supplemental [Subordinated] Indenture pursuant to the provisions of this Article Ten, or after any action taken at a [Subordinated] Securityholders' meeting pursuant to Article Nine, may bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental [Subordinated] Indenture or as to any action taken at any such meeting. If the Company or the Trustee shall so determine, new [Subordinated] Securities so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this [Subordinated] Indenture contained in any such Supplemental [Subordinated] Indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the [Subordinated] Securities then Outstanding.

ARTICLE ELEVEN

DISCHARGE; DEFEASANCE

SECTION 11.01. Satisfaction and Discharge of [Subordinated] Indenture.

(A) If at any time (i) the Company shall have paid or caused to be paid the principal of and interest on all the [Subordinated] Securities of any series Outstanding hereunder (other than [Subordinated] Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09) as and when the same shall have become due and payable, or (ii) the Company shall have delivered to the Trustee for cancellation all

[Subordinated] Securities of any series theretofore authenticated (other than any [Subordinated] Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09) or (iii) in the case of any series of [Subordinated] Securities where the exact amount (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (b) below, (a) all the [Subordinated] Securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (b) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust the entire amount in (i) cash (other than moneys repaid by the Trustee or any Paying Agent to the Company in accordance with Section 11.04), (ii) in the case of any series of [Subordinated] Securities the payments on which may only be made in Dollars, direct obligations of the United States of America, backed by its full faith and credit (“ *U.S. Government Obligations* ”), maturing as to principal and interest at such times and in such amounts as will insure the availability of cash sufficient to pay at such Maturity or upon such redemption, as the case may be, or (iii) a combination thereof, 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 (a) the principal and interest on all [Subordinated] Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the [Subordinated] Indenture and the [Subordinated] Securities of such series; (x) the principal and interest on all [Subordinated] Securities of such series on each date that such principal or interest is due and payable and in accordance with the terms of the [Subordinated] Indenture and the [Subordinated] Securities of such series; and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this [Subordinated] Indenture shall cease to be of further effect (except as to (i) rights of registration of transfer and exchange of [Subordinated] Securities of such series and the Company’s right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen [Subordinated] Securities, (iii) rights of Holders of [Subordinated] Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefore (but not upon acceleration), (iv) any optional redemption rights of such series of [Subordinated] Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, including without limitation those under Section 7.6, (vi) the rights of the Holders of securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them, and (vii) the obligations of the Company under Section 4.03 and the Trustee, on demand of the Company accompanied by an Officer’s Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this [Subordinated] Indenture; provided, that the rights of Holders of the [Subordinated] Securities to receive amounts in respect of principal of and interest on the [Subordinated] Securities held by them shall not be delayed longer than required by then applicable mandatory rules or policies of any securities exchange upon which the [Subordinated] Securities are listed. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this [Subordinated] Indenture or the [Subordinated] Securities of such series.

(B) The following provisions shall apply to the [Subordinated] Securities of each series unless specifically otherwise provided in an Officer's Certificate or indenture supplemental hereto provided pursuant to Section 2.03. In addition to discharge of the [Subordinated] Indenture pursuant to the next preceding paragraph, in the case of any series of [Subordinated] Securities the exact amounts (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (a) below, the Company shall be deemed to have paid and discharged the entire indebtedness on all the [Subordinated] Securities of such a series on the date of the deposit referred to in clause (a) below, and the provisions of this [Subordinated] Indenture with respect to the [Subordinated] Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of [Subordinated] Securities of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen [Subordinated] Securities, (iii) rights of Holders of [Subordinated] Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (iv) any optional redemption rights of such series of [Subordinated] Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, (vi) the rights of the Holders of [Subordinated] Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vii) the obligations of the Company under Section 4.03 and the Trustee, at the expense of the Company, shall at the Company's request, execute proper instruments acknowledging the same, if

(a) with reference to this provision the Company has irrevocably 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 [Subordinated] Securities of such series (i) cash in an amount, or (ii) in the case of any series of [Subordinated] Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, 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 the principal and interest on all [Subordinated] Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the [Subordinated] Indenture and the [Subordinated] Securities of such series;

(b) such deposit will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Company is a party or by which it is bound;

(c) the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the IRS a ruling or (y) since the date hereof, there has been a change in the applicable Federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the [Subordinated] Securities of such series will not recognize income, gain or loss for United States Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to United States 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;

(d) [no event or condition exists that, based on the subordination provisions applicable to the Subordinated Securities of such series, would prevent the Company from making payments of principal of, premium, if any, and interest on any of the applicable Subordinated Securities at the date of the irrevocable deposit referred to in Section 11.01(B)(a) above or at any time during the period ending on the 91st day after such deposit date; and]

(e) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this provision have been complied with.

(C) The Company shall be released from its obligations under Sections 4.02 and unless otherwise provided for in the Board Resolution, Officer's Certificate or [Subordinated] Indenture supplemental hereto establishing such series of [Subordinated] Securities, from all covenants and other obligations referred to in Section 2.03(18) or 2.03(20) with respect to such series of [Subordinated] Securities outstanding on and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"). For this purpose, such covenant defeasance means that, with respect to the Outstanding [Subordinated] Securities of any series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in such Section, whether directly or indirectly by reason of any reference elsewhere herein to such Section or by reason of any reference in such Section to any other provision herein or in any other document and such omission to comply shall not constitute an Event of Default under Section 6.01, but the remainder of this [Subordinated] Indenture and such [Subordinated] Securities shall be unaffected thereby. The following shall be the conditions to application of this subsection C of this Section 11.01:

(a) The Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of the [Subordinated] Securities of such series (i) cash in an amount, or (ii) in the case of any series of [Subordinated] Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, 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 the principal and interest on all [Subordinated] Securities of such series in accordance with the terms of the [Subordinated] Indenture and the [Subordinated] Securities of such series;

(b) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the [Subordinated] Securities shall have occurred and be continuing on the date of such deposit;

(c) Such covenant defeasance shall not cause the Trustee to have a conflicting interest as defined in Section 7.08 and for purposes of the Trust Indenture Act with respect to any securities of the Company;

(d) Such covenant defeasance shall not result in a breach or violation of, or constitute a default under, this [Subordinated] Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such covenant defeasance shall not cause any [Subordinated] Securities then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) The Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel to the effect that the Holders of the [Subordinated] Securities of such series will not recognize income, gain or loss for United States Federal income tax purposes as a result of such covenant defeasance and will be subject to United States Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(g) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the covenant defeasance contemplated by this provision have been complied with.

SECTION 11.02. Application by Trustee of Funds Deposited for Payment of [Subordinated] Securities. Subject to Section 11.04, all moneys deposited with the Trustee (for other trustee) pursuant to Section 11.01 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Holders of the particular [Subordinated] Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such money need not be segregated from other funds except to the extent required by law.

SECTION 11.03. Repayment of Moneys Held by Paying Agent. In connection with the satisfaction and discharge of this [Subordinated] Indenture with respect to [Subordinated] Securities of any series, all moneys then held by any Paying Agent under the provisions of this [Subordinated] Indenture with respect to such series of [Subordinated] Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 11.04. Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years. Any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of and any premium and interest on any [Subordinated] Security and not so applied but remaining unclaimed under applicable law shall be transferred by the Trustee to the appropriate Persons in accordance with applicable laws, and the Holder of such [Subordinated] Security of such series shall thereafter look only to such Persons for any payment which such Holder may be entitled to collect and all liability of the Trustee and such Paying Agent with respect to such moneys shall thereupon cease.

SECTION 11.05. Indemnity for U.S. Government of Obligations. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against

the U.S. Government Obligations deposited pursuant to Section 11.01 or the principal or interest received in respect of such obligations.

ARTICLE TWELVE

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 12.01. Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability. No recourse under or upon any obligation, covenant or agreement of this [Subordinated] Indenture, or of any [Subordinated] Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, as such past, present or future, of the Company, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this [Subordinated] Indenture and the obligations issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors, as such, of the Company because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this [Subordinated] Indenture or in any of the [Subordinated] Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this [Subordinated] Indenture or in any of the [Subordinated] Securities or implied therefrom are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this [Subordinated] Indenture and the issue of such [Subordinated] Securities.

ARTICLE THIRTEEN

MISCELLANEOUS PROVISIONS

SECTION 13.01. Successors and Assigns of the Company Bound by [Subordinated] Indenture. All the covenants, stipulations, promises and agreements in this [Subordinated] Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 13.02. Notices; Effectiveness. Any notice or demand which by any provision of this [Subordinated] Indenture is required or permitted to be given or served by the Trustee or by the Holders of [Subordinated] Securities to or on the Company, or by the Company or by the Holders of [Subordinated] Securities to the Trustee or upon the Depository by the Company or the Trustee may be electronically communicated or hand delivered or sent by overnight courier, addressed to the relevant party as provided in this Section 13.02.

All communications intended for the Company shall be sent to:

Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025
Attention: Chief Financial Officer

All communications intended for the Trustee shall be sent to:

[Name Trustee]
[Address]
[City, State, Zip Code]
[Attention: _____]

or at any other address of which any of the foregoing shall have notified the others in any manner prescribed in this Section 13.02.

For all purposes of this [Subordinated] Indenture, a notice or communication will be deemed effective:

- (a) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a Business Day in the city specified (a “*Local Business Day*”) in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Business Day, then on the next succeeding Local Business Day or
- (b) if sent by facsimile transmission, on the date transmitted, provided that oral or written confirmation of receipt is obtained by the sender unless the date of transmission and confirmation is not a Local Business Day, in which case, on the next succeeding Local Business Day.

Any notice, direction, requires, demand, consent or waiver by the Company, any [Subordinated] Securityholder to or upon the Trustee shall be deemed to have been sufficiently given, made or filed, for all purposes, if given, made or filed in writing at the Principal Office of the Trustee in accordance with the provisions of this Section 13.02.

Any notice, request, consent or waiver by the Company or the Trustee upon the Depository shall have been sufficiently given, made or filed, for all purposes, if give or made in accordance with the provisions of this Section 13.02 at the address shown for such Depository in the Register or at such other address as the Depository shall have provided for purposes of notice.

SECTION 13.03. Compliance Certificates and Opinions. Upon on any request or application by the Company to the Trustee to take any action under any of the provisions of this [Subordinated] Indenture, the Company shall furnish to the Trustee an Officer’s Certificate stating that all conditions precedent, if any, provided for in this [Subordinated] 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 have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by

any provision of this [Subordinated] Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this [Subordinated] Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this [Subordinated] Indenture (other than a certificate provided pursuant to Section 5.03(d) shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Any certificate, statement 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 that the certificate or opinion or representations with respect to the matters upon which such certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or Opinion of Counsel may be based, insofar as it relates to factual matters, upon the certificate, statement 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 that the certificate, statement or opinion or representations with respect to the matters upon which such Person's certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his or her certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate or opinion of any firm of independent public accountants filed with the Trustee shall contain a statement that such firm is independent.

SECTION 13.04. Days on Which Payment to be Made, Notice Given or Other Action Taken. If any date on which a payment is to be made, notice given or other action taken hereunder is a Saturday, Sunday or legal holiday in the state in which the payment, notice or other action is to be made, given or taken, then such payment, notice or other action shall be made, given or taken on the next succeeding Business Day in such state, and in the case of any payment, no interest shall accrue for the delay.

SECTION 13.05. Provisions Required by Trust Indenture Act to Control. If and to the extent that any provision of this [Subordinated] Indenture limits, qualifies or conflicts with another provision included in this [Subordinated] Indenture which is required to be included in this

[Subordinated] Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act such required provision shall control.

SECTION 13.06. Governing Law and Waiver of Trial By Jury. THIS [SUBORDINATED] INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW OR ANY SUCCESSOR TO SUCH STATUTE). THE TRUSTEE AND THE COMPANY AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES. THIS INDENTURE IS SUBJECT TO THE PROVISIONS OF THE TRUST INDENTURE ACT THAT ARE REQUIRED TO BE PART OF THIS INDENTURE AND SHALL, TO THE EXTENT APPLICABLE, BE GOVERNED BY SUCH PROVISIONS.

THE TRUSTEE AND THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE TRUSTEE OR THE COMPANY RELATING THERETO. THE COMPANY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TRUSTEE AND THE HOLDERS ENTERING INTO THIS INDENTURE.

SECTION 13.07. Effect of Headings. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 13.08. Judgment Currency. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest on the [Subordinated] Securities of any series (the “*Required Currency*”), into a currency in which a judgment will be rendered (the “*Judgment Currency*”), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then, to the extent permitted by applicable law, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this [Subordinated] Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency

expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this [Subordinated] Indenture. The Company agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee against loss if Dollars so purchased are less than the sum originally due to the Trustee in Dollars. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close.

SECTION 13.09. Provisions of the [Subordinated] Indenture and [Subordinated] Securities for the Sole Benefit of the Parties and the [Subordinated] Securityholders. Nothing in this [Subordinated] Indenture or in the [Subordinated] Securities, expressed or implied, shall give or be construed to give any Person, firm or Company, other than the parties hereto and the Holders of the [Subordinated] Securities, any legal or equitable right, remedy or claim under or in respect of this [Subordinated] Indenture, or under any covenant, condition and provision herein contained; all its covenants, conditions and provisions being for the sole benefit of the parties hereto and of the Holders of the [Subordinated] Securities.

SECTION 13.10. [Subordinated] Indenture May be Executed in Counterparts. This [Subordinated] Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 13.11. Facsimile or PDF. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 13.12. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions or loss of utilities; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.13. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE FOURTEEN

[SUBORDINATION OF SECURITIES]

SECTION 14.01. Subordinated Securities Subordinated to Senior Indebtedness. The Company covenants and agrees, and each Holder of Subordinated Securities, by his acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Subordinated Securities and the payment of the principal of (and premium, if any) in respect of each and all of the Subordinated Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of Senior Indebtedness.

In the event (a) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company whether in bankruptcy, insolvency, reorganization or receivership proceeding or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with a merger or consolidation or a conveyance or transfer of all or substantially all of the properties of the Company which complies with the requirements of Section 4.02, or (b) that a default shall have occurred and be continuing with respect to the payment of principal of (or premium, if any) in respect of any Senior Indebtedness, or (c) that the principal of the Subordinated Securities of any series (or in the case of Original Issue Discount Securities, the portion of the principal amount thereof referred to in Section 6.01) shall have been declared due and payable pursuant to Section 6.01 and such declaration shall not have been rescinded and annulled as provided in Section 6.01, then:

(1) in a circumstance described in the foregoing clause (a) or (b) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (c) the holders of all Senior Indebtedness outstanding at the time the principal of such Subordinated Securities (or in the case of Original Issue Discount Securities, such portion of the principal amount) shall have been so declared due and payable, shall first be entitled to receive payment of the full amount due thereon in respect of principal, premium (if any), interest, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Subordinated Securities are entitled to receive any payment on account of the principal of (or premium, if any) or interest payable in respect of the indebtedness evidenced by the Subordinated Securities;

(2) any payment by, or distribution of assets of, the Company of any kind of character, whether in cash, property or securities (other than securities 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 subordinate, at least to the extent provided in this Article with respect to the securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of the Senior Indebtedness are not altered by such reorganization or readjustment), to which the Holders of any of the Subordinated Securities would be entitled except for the provisions of this Article shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior

Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefore) to the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of the indebtedness evidenced by the Subordinated Securities under this Subordinated Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind of character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustments the payment of which is subordinate, at least to the extent provided in this Article with respect to the Subordinated Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of Senior Indebtedness are not altered by such reorganization or readjustment), shall be received by the Holders of any of the Subordinated Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

SECTION 14.02. Subrogation. Subject to the payment in full of all Senior Indebtedness to which the indebtedness evidenced by the securities is in the circumstances subordinated as provided in Section 14.01, the Holders of the Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or Subordinated Securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Subordinated Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Indebtedness, and the Holders of the Subordinated Securities, no such payment or distribution made to the holders of such Senior Indebtedness by virtue of this Article which otherwise would have been made to the Holders of the Subordinated Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness.

SECTION 14.03. Obligation of the Company Unconditional. Nothing contained in this Article or elsewhere in this Subordinated Indenture or in the Subordinated Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Subordinated Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Subordinated Securities the principal of (and premium, if any) and interest payable in the respect of the Subordinated 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 of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness nor shall anything herein or therein prevent the Trustee or

the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Subordinated Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or Subordinated Securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Subordinated Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustee or to the Holders of the Subordinated Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 14.04. Payments on Subordinated Securities Permitted. Nothing contained in this Article or elsewhere in this Subordinated Indenture, or in any of the Subordinated Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payment of the principal of (or premium, if any) or interest payable in respect of the Subordinated Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article or in any Supplemental Subordinated Indenture or Board Resolution pursuant to Section 2.03.

SECTION 14.05. Effectuation of Subordinated by Trustee. Each holder of the Subordinated Securities, by his acceptance thereof, authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.06. Knowledge of Trustee. Notwithstanding the provisions of this Article or any other provisions of this Subordinated Indenture, the Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment or moneys to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee shall have received written notice thereof from the Company, any Holder of Subordinated Securities, any paying or conversion agent of the Company or the holder or representative of any class of Senior Indebtedness; provided, however, that if the Trustee shall not have received the notice provided for in this Section at least three 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 premium, if any) or interest on any Subordinated Security) then, anything herein contained to the contrary notwithstanding, the Trustee shall have all power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it during or after such three Business Day period.

SECTION 14.07. Trustee May Hold Senior Indebtedness. The trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior

Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 313 of the Trust Indenture Act or elsewhere in this Subordinated Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall subordinate any claims of, or payments to, the Trustee (under or pursuant to Section 7.06) to Senior Indebtedness.

SECTION 14.08. Rights of Holders of Senior Indebtedness Not Impaired. No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any non-compliance by the Company with the terms, provisions and covenants of this Subordinated Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.]

[Signature page follows]

IN WITNESS WHEREOF, FACEBOOK, INC. has caused this [Subordinated] Indenture to be signed by its Chairman of the Board or any Vice-Chairman of the Board or its Chief Executive Officer, President or Chief Financial Officer or one of its Vice Presidents and Trustee has caused this [Subordinated] Indenture to be signed and acknowledged by an appropriate officer, all as of the day and year first written above.

FACEBOOK, INC.

By: _____
Title:

as Trustee

By: _____
Title:

FORM OF [SUBORDINATED] DEBT SECURITY

FORM OF [SUBORDINATED] DEBT SECURITY

[Face of [Subordinated] Security]

FACEBOOK, INC.

[If applicable, insert — FOR PURPOSES OF THE ORIGINAL ISSUE DISCOUNT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE ISSUE PRICE OF THIS [SUBORDINATED] SECURITY IS ____% OF ITS PRINCIPAL AMOUNT AT STATED MATURITY SET FORTH BELOW (ITS “PRINCIPAL AMOUNT”), THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IS ____% OF ITS PRINCIPAL AMOUNT, THE YIELD TO MATURITY IS ____% AND THE ISSUE DATE IS _____.]

[IF THE [SUBORDINATED] SECURITY IS A GLOBAL [SUBORDINATED] SECURITY, INSERT — THIS NOTE IS A GLOBAL [SUBORDINATED] SECURITY. IT IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY (AS HEREINAFTER DEFINED) OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES HEREINAFTER DESCRIBED AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY TO A SUCCESSOR OF THE DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

[Unless this [Subordinated] Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) 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 such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

No. _____

\$ _____
CUSIP No

Facebook, Inc., a Delaware Corporation (herein called the “Company,” which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to, or registered assigns, the principal sum of ____Dollars on _____[if [Subordinated] Security is to bear interest prior to maturity, insert — and to pay interest thereon from _____or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____and _____in each year, commencing _____, at the rate of ____% per annum, until the principal hereof is paid or made available for payment [if applicable, insert — provided that any principal and premium,

and any such installment of interest, which is overdue shall bear interest at the rate of ____% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this [Subordinated] Security (or one or more Predecessor [Subordinated] Securities) is registered at the close of business on the Record Date for such interest, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and may either be paid to the Person this [Subordinated] Security (or one or more Predecessor [Subordinated] Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of [Subordinated] Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any [Subordinated] Securities exchange on which the [Subordinated] Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. [If the [Subordinated] Security is not to bear interest prior to maturity, insert — The principal of this [Subordinated] Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of ____% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. [Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of ____% per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]].

Payment of the principal of (and premium, if any, on) and [any such] interest on this [Subordinated] Security will be made at the office or agency of the Company maintained for that purpose in _____, in such coin or currency of [the United States of America] as at the time of payment is legal tender for payment of public and private debts [; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Register].

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

Unless the certificate of authentication hereon has been manually executed by or on behalf of the Trustee under the Indenture referred to on the reverse hereof, this [Subordinated] Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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

Dated:

Facebook, Inc.

By:

[Title]

Attest and Countersign:

Secretary

[Reverse of [Subordinated] Security.]

FACEBOOK, INC.

This [Subordinated] Security is one of a duly authorized issue of [Subordinated] Securities of the Company (herein called the “[Subordinated] Securities”), issued and to be issued in one or more series under an Indenture dated as of _____, (herein called the “Indenture,” which term shall have the meaning assigned to it in such instrument), between the Company and _____, 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 or rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the [Subordinated] Securities and of the terms upon which the [Subordinated] Securities are, and are to be, authenticated and delivered. This [Subordinated] Security is one of the series designated on the face hereof [, limited in aggregate principal amount to \$ _____].

[If the [Subordinated] Security is to be subordinated, insert—The indebtedness evidenced by this [Subordinated] Security is, to the extent and in the manner set forth in the Indenture, expressly subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness (as defined in the Indenture) of the Company. This [Subordinated] Security is issued subject to such provisions of the Indenture, and each Holder of this [Subordinated] Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes and directs the Trustee on the Holder’s behalf to take such action as may be necessary or appropriate to acknowledge or effectuate such subordination as provided in the Indenture and appoints the Trustee such Holder’s attorney-in-fact for any and all such purposes.]

[If the [Subordinated] Security is to be subject to redemption only at the option of the Company, insert—The [Subordinated] Securities of this series are subject to redemption upon not less than 30 days’ notice provided in the manner set forth in the Indenture, [(1) on _____ in any year commencing with the year _____ and ending with the year _____ at the Redemption Price equal to 100% of the principal amount, and (2)] at any time [on or after _____, _____], as a whole or in part, at the election of the principal the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before _____, ____%, and if redeemed] during the 12-month period beginning _____ of the years indicated,

<u>Year</u>	<u>Redemption Price</u>	<u>Year</u>	<u>Redemption Price</u>
and thereafter at a Redemption Price equal to ____% of the principal amount together in the case of any such redemption [(whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such [Subordinated] Securities of record at the close of business on the relevant record dates referred to on the face hereof, all as provided in the Indenture.]			

[If the [Subordinated] Security is to be redeemable in part, insert—In the event of redemption of this [Subordinated] Security in part only, a new [Subordinated] Security or [Subordinated] Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If the [Subordinated] Security is to be subject to repayment at the option of the Holder, insert—To be repaid at the option of the Holder, the Company must receive this [Subordinated] Security, with the form of “Option to Elect Repayment” hereon duly completed, at an office or agency of the Company maintained for that purpose in _____ (or at such other place of which the Company shall from time to time notify the Holder of this [Subordinated] Security) not less than nor more than _____ days prior to the Repayment Date. The exercise of the repayment option by the Holder shall be irrevocable.

[If the [Subordinated] Security is not to be subject to redemption at the option of the Company, insert—The [Subordinated] Securities are not redeemable at the option of the Company prior to Maturity.]

[If the [Subordinated] Security is not to be an Original Issue Discount Security, insert—If an Event of Default with respect to [Subordinated] Securities of this series shall occur and be continuing, the principal of the [Subordinated] Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the [Subordinated] Security is to be an Original Issue Discount Security, insert—If an Event of Default with respect to [Subordinated] Securities of this series shall occur and be continuing, an amount of principal of the [Subordinated] Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to [insert formula for determining the amount]. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company’s obligations in respect of the payment of the principal of and interest, if any, on the [Subordinated] Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the [Subordinated] Securities of each series under the Indenture to be affected at any time by the Company with the consent of the Holders of not less than 66-2/3% in principal amount of the [Subordinated] Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the [Subordinated] Securities of each series at the time Outstanding, on behalf of the Holders of all [Subordinated] Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this [Subordinated] Security shall be conclusive and binding upon such Holder and upon all future Holders of this [Subordinated] Security and of any [Subordinated] Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this [Subordinated] Security.

As provided in and subject to the provisions of the Indenture, the Holder of this [Subordinated] Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the [Subordinated] [Subordinated] Securities of this series, the Holders of not less than 25% in principal amount of the [Subordinated] Securities of this series at the time Outstanding shall have made written request to the trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of [Subordinated] Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this [Subordinated] Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this [Subordinated] Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any, on) and interest on this [Subordinated] Security at the times, place and rate, and in the coin or currency, herein prescribed.

[If the [Subordinated] Security is to be registered form, insert—As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this [Subordinated] Security is registrable in the Register, upon surrender of this [Subordinated] Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any, on) and interest on this [Subordinated] Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and, thereupon one or more new [Subordinated] Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.]

[The [Subordinated] Securities of this series are issuable only in registered form in denominations of \$ _____ [and any integral multiple] [or increments of \$ _____ in excess] thereof. As provided in the Indenture and subject to certain limitations therein set forth, [Subordinated] Securities of this series are exchangeable for a like aggregate principal amount of [Subordinated] Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.]

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

[Prior to due presentment of this [Subordinated] Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this [Subordinated] Security is registered as the owner hereof for all purposes,

whether or not this [Subordinated] Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.]

[If the [Subordinated] Security is a Global [Subordinated] Security, insert—“Global [Subordinated] Security” and “Global [Subordinated] Securities” means a [Subordinated] Security or [Subordinated] Securities evidencing all or a part of a series of [Subordinated] Securities, issued to the Depositary (as hereinafter defined) for such Series or its nominee, and registered in the name of such Depositary or its nominee. “Depositary” means, with respect to the [Subordinated] Securities of any series issuable or issued in whole or in part in the form of one or more Global [Subordinated] Securities, the person designated as the Depositary by the Company.

No holder of any beneficial interest in this [Subordinated] Security held on its behalf by a Depositary or a nominee of such Depositary shall have any rights under the Indenture with respect to such Global [Subordinated] Security, and such Depositary or nominee may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global [Subordinated] Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary as Holder of any [Subordinated] Security.

This [Subordinated] Security is exchangeable, in whole but not in part, for [Subordinated] Securities registered in the names of Persons other than the Depositary or its nominee or in the name of a successor to the Depositary or a nominee of such successor depositary only if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for this Note or if at any time such Depositary ceases to be a clearing agency registered under the [Subordinated] Securities Exchange Act of 1934, as amended, and, in either case, a successor depositary is not appointed by the Company within 90 days, (ii) the Company in its discretion at any time determines not to have all of the [Subordinated] Securities of this series represented by one or more Global [Subordinated] Security or [Subordinated] Securities and notifies the Trustee thereof, or (iii) an Event of Default has occurred and is continuing with respect to the [Subordinated] Securities of this series. If this [Subordinated] Security is exchangeable pursuant to the preceding sentence, it shall be exchangeable for [Subordinated] Securities issuable in authorized denominations and registered in such names as the Depositary holding this [Subordinated] Security shall direct. Subject to the foregoing, this [Subordinated] Security is not exchangeable, except for a [Subordinated] Security or [Subordinated] Securities of the same aggregate denominations to be registered in the name of such Depositary or its nominee or in the name of a successor to the Depositary or a nominee of such successor depositary.]

[The Indenture entitles Holders to receive annual reports with respect to the Trustee’s eligibility and qualifications to serve as Trustee by filing their names and addresses with the Trustee for that purpose within two years preceding and mailing of any such annual report.]

No recourse shall be had for the payment of the principal of (and premium, if any, on) or interest on this [Subordinated] Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture of any indenture supplemental thereto, against

any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

All terms used in this [Subordinated] Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

This [Subordinated] Security, including without limitation the obligation of the Company contained herein to pay the principal of (and premium, if any, on) and interest on this [Subordinated] Security in accordance with the terms hereof and of the Indenture, shall be construed in accordance with and governed by the laws of the State of New York.

[Trustee’s Certificate of Authentication.]

This is one of the [Subordinated] Securities of the series designated herein referred to in the within-mentioned Indenture.

_____, as
[Authenticating Agent for] the Trustee

By: _____
Authorized Officer



SILICON VALLEY 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041
TEL: 650.988.8500 FAX: 650.938.5200 WWW.FENWICK.COM

October 29, 2014

Facebook, Inc.
1601 Willow Road
Menlo Park, California 94025

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-3 (the “**Registration Statement**”) to be filed by Facebook, Inc., a Delaware corporation (the “**Company**”), with the Securities and Exchange Commission (the “**Commission**”) on October 29, 2014 in connection with the registration under the Securities Act of 1933, as amended (the “**Securities Act**”), of an indeterminate aggregate amount of shares of the Company’s Class A Common Stock, \$0.000006 par value per share (the “**Class A Common Stock**”), shares of the Company’s preferred stock, \$0.000006 par value per share (the “**Preferred Stock**”), debt securities of the Company (the “**Debt Securities**”) or warrants to purchase shares of Class A Common Stock or Preferred Stock (the “**Warrants**”), at indeterminate prices, in reliance on Rule 456(b) and Rule 457(r) under the Securities Act. The Class A Common Stock, the Preferred Stock, the Debt Securities and the Warrants are collectively referred to herein as the “**Securities**.” The Securities may be sold from time to time by the Company as set forth in the Registration Statement, the prospectus contained within the Registration Statement (the “**Prospectus**”), supplements to the Prospectus (each a “**Prospectus Supplement**”) and any free writing prospectus (each a “**Free Writing Prospectus**”).

In rendering this opinion, we have examined such matters of fact as we have deemed necessary in order to render the opinions set forth herein, which included examination of the following:

- (1) the Company’s Restated Certificate of Incorporation, certified by the Delaware Secretary of State on May 22, 2012 (the “**Certificate of Incorporation**”);
- (2) the Company’s Amended and Restated Bylaws, as certified to us as of the date hereof by an officer of the Company as being complete and in full force and effect as of the date hereof (the “**Bylaws**”);
- (3) the Registration Statement, together with the exhibits filed as a part thereof or incorporated therein by reference;
- (4) the Prospectus prepared in connection with the Registration Statement;

(5) minutes of meetings and actions by written consent of the Company's Board of Directors (the “**Board**”) and the Company's stockholders provided to us by the Company relating to the adoption, approval, authorization and/or ratification of (i) the Certificate of Incorporation, (ii) the Bylaws and (iii) the filing of the Registration Statement;

(6) the stock records of the Company that the Company has provided to us (consisting of a certificate from the Company's transfer agent, Computershare Trust Company, N.A., dated October 28, 2014, verifying the number of the Company's issued and outstanding shares of capital stock as of October 28, 2014, and a statement prepared by the Company as to the number of issued and outstanding restricted stock units, stock options and any additional shares of capital stock reserved for future issuance as of October 28, 2014);

(7) a Certificate of Good Standing issued by the Secretary of State of the State of Delaware dated October 29, 2014, stating that the Company is in good standing and has a legal corporate existence under the laws of the State of Delaware (the “**Certificate of Good Standing**”);

(8) the Form of Indenture for the Debt Securities that was filed with the Registration Statement (the “**Indenture**”); and

(9) a management certificate addressed to us and dated as of even date herewith executed by the Company containing certain factual representations (the “**Management Certificate**”).

In our examination of documents for purposes of this opinion, we have assumed, and express no opinion as to, the genuineness of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, the lack of any undisclosed termination, modification, waiver or amendment to any document reviewed by us, and the due authorization, execution and delivery of all such documents where due authorization, execution and delivery are prerequisites to the effectiveness thereof.

We have also assumed that, if and to the extent that the Securities will be issued in certificated form, the certificates or instruments representing the Securities will be, when issued, properly signed by authorized officers of the Company or their agents, properly authenticated in accordance with the terms of the Securities and delivered to the intended recipients with the intent that the Company be bound thereby. Furthermore, with respect to the Company's uncertificated capital stock, we assume that issued Class A Common Stock will not be reissued by the Company in uncertificated form until any previously issued stock certificate representing such issued Class A Common Stock has been surrendered to the Company in accordance with Section 158 of the Delaware General Corporation Law, and that the Company will properly register the transfer of the Class A Common Stock to the

purchasers of such Class A Common Stock on the Company's record of uncertificated securities.

As to matters of fact relevant to this opinion, we have relied solely upon our examination of the documents referred to above and have assumed the current accuracy and completeness of the information obtained from the documents referred to above and the representations and warranties made by representatives of the Company to us, including but not limited to those set forth in the Management Certificate. We have made no independent investigation or other attempt to verify the accuracy of any of such information or to determine the existence or non-existence of any other factual matters.

We are admitted to practice law in the State of California, and we render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than, the existing laws (a) of the United States of America, (b) of the State of California, (c) of the Delaware General Corporation Law and reported judicial decisions relating thereto and (d) solely with respect to the Debt Securities, of the State of New York.

In connection with our opinions expressed below, we have assumed (a) that at or prior to the time of the offer, issuance and sale of any Securities in connection with the Registration Statement, the Prospectus, the applicable Prospectus Supplement and any applicable Free Writing Prospectus, the Registration Statement will be in effect and no stop order suspending the Registration Statement's effectiveness will have been issued and remain in effect, (b) that the registration will apply to such Securities and will not have been modified or rescinded, (c) that there will not have occurred any change in law affecting the validity or enforceability of the Securities, (d) if any Debt Securities are issued, they will only be issued pursuant to the Indenture in substantially the form filed with the Registration Statement or a post-effective amendment to the Registration Statement or incorporated by reference therein and (e) that the issuance and delivery of such Securities and the compliance by the Company with the terms of such Securities will not violate any applicable law (including, without limitation, any law relating to usury) or result in a violation of any provision of the Certificate of Incorporation or the Bylaws then in effect or any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body having jurisdiction over the Company.

The Company has informed us that the Company intends to issue the Securities from time to time on a delayed or continuous basis. This opinion is limited to the laws, including the rules and regulations, as in effect on the date hereof. Furthermore, this opinion is qualified by, and is subject to, and we render no opinion with respect to, the following limitations and exceptions to the enforceability of the Securities (a) the effect of the laws of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, and other similar laws now or hereinafter in effect relating to or affect the rights and remedies of creditors, (b) the effect of general principles of equity and similar principles, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, public policy and unconscionability, and the possible unavailability of specific performance, injunctive relief or other equitable remedies, regardless of whether considered in a

proceeding in equity or at law, (c) with respect to the Debt Securities, the effect of California, New York and federal laws relating to usury or permissible rates of interest for loans, forbearances or the use of money and (d) the effect of provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to federal or state securities laws. We are basing this opinion on our understanding that, prior to issuing any Securities in connection with the Registration Statement, the Company will advise us in writing of the terms thereof and other information material thereto, will afford us an opportunity to review the operative documents pursuant to which such Securities are to be issued (including the Registration Statement, the Prospectus and the applicable Prospectus Supplement and any applicable Free Writing Prospectus, as then in effect) and will file such supplement or amendment to this opinion (if any) or substitute thereof as we may reasonably consider necessary or appropriate with respect to such Securities. We also assume that the Company will (a) timely file any and all supplements to the Registration Statement and Prospectus as are necessary to comply with the Securities Act and all other applicable laws in effect from time to time and (b) duly amend its Certificate of Incorporation to increase the authorized number of shares of its capital stock if the number of such shares to be sold pursuant to the Registration Statement would cause the Company to issue more shares than it has authorized. However, we undertake no responsibility to monitor the Company's future compliance with applicable laws, rules or regulations of the Commission or other governmental body.

With respect to our opinion expressed in paragraph (1) below as to the valid existence and good standing of the Company under the laws of the State of Delaware, we have relied solely upon the Certificate of Good Standing and representations made to us by the Company in the Management Certificate.

In accordance with Section 95 of the American Law Institute's Restatement (Third) of the Law Governing Lawyers (2000), this opinion letter is to be interpreted in accordance with customary practices of lawyers rendering opinions to third parties in connection with the filing of a registration statement with the Commission of the type described herein.

Based upon the foregoing, it is our opinion that:

- (1) The Company is a corporation validly existing, in good standing, under the laws of the State of Delaware;
 - (2) With respect to the shares of Class A Common Stock registered pursuant to the Registration Statement, when (a) the Board and, if required, the Company's stockholders, have taken all necessary corporate action to approve the issuance of and the terms of the offering of the shares of Class A Common Stock and related matters, (b) such shares of Class A Common Stock are issued, sold and delivered, as stated in the Registration Statement, the Prospectus, any Prospectus Supplement and any Free Writing Prospectus relating thereto (as amended as of the date of the offer for such issuance, sale and delivery), either (i) in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor (not less than the par value of the Class A Common Stock) provided for therein or (ii) upon
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conversion or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board (not less than the par value of the Class A Common Stock) and (c) if such shares of Class A Common Stock are certificated, certificates representing the shares of Class A Common Stock have been duly executed, countersigned, registered and delivered, then such shares of Class A Common Stock will be validly issued, fully paid and nonassessable;

- (3) With respect to any particular series of shares of Preferred Stock registered pursuant to the Registration Statement, when (a) the Board and, if required, the Company's stockholders, have taken all necessary corporate action to approve the issuance of and the terms of the shares of Preferred Stock, the terms of the offering thereof and related matters, including the adoption of a certificate of designation relating to such Preferred Stock conforming to the Certificate of Incorporation and Bylaws and the Delaware General Corporation Law (a "***Certificate*** ") and the reservation for future issuance of a sufficient number of authorized shares of Preferred Stock, Class A Common Stock or other Securities into which the Debt Securities may be convertible, and the filing of the Certificate with the Secretary of State of the State of Delaware, (b) such shares of Preferred Stock are issued, sold and delivered, as stated in the Registration Statement, the Prospectus, any Prospectus Supplement and any Free Writing Prospectus relating thereto (as amended as of the date of the offer for such issuance, sale and delivery), either (i) in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor (not less than the par value of the Preferred Stock) provided for therein or (ii) upon conversion or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board (not less than the par value of the Preferred Stock) and (c) if such shares of Preferred Stock are certificated, certificates representing the shares of Preferred Stock have been duly executed, countersigned, registered and delivered, then such shares of Preferred Stock will be validly issued, fully paid and nonassessable;
- (4) With respect to any Debt Securities registered pursuant to the Registration Statement, when (a) the Board and, if required, the Company's stockholders, have taken all necessary corporate action to approve the issuance and the terms of such Debt Securities, the terms, execution and delivery of the Indenture by the Company and the trustee, the terms of the offering thereof and related matters, including reservation for future issuance of a sufficient number of authorized shares of Class A Common Stock, Preferred Stock or other Securities into which such Debt Securities may be convertible, (b) an indenture relating to such Debt Securities, in substantially the form of the Form of Indenture has been duly authorized and validly executed and delivered by each of the Company and the
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trustee, (c) the form and terms of the Debt Securities have been duly established in accordance with the Indenture pursuant to resolutions duly adopted by the Board and as set forth in an officer's certificate or supplemental indenture duly authorized by the Board and duly executed by an authorized officer of the Company, and (d) (i) such Debt Securities have been duly executed and authenticated in accordance with the terms of the Indenture, and issued, sold and delivered in accordance with the terms of the Indenture, and issued, sold and delivered in the manner and for the consideration stated in any applicable definitive purchase, underwriting or similar agreement, (ii) upon conversion or exercise, in accordance, with the terms of the Indenture, of such Debt Securities or the instrument governing such Debt Securities providing for such conversion or exercise for the consideration approved by the Board or (iii) upon conversion or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board, as stated in the Registration Statement, the Prospectus, any Prospectus Supplement and any Free Writing Prospectus relating thereto (as amended as of the date of the offer for such issuance, sale and delivery), then such Debt Securities will be validly issued and will constitute valid and binding obligations of the Company; and

- (5) With respect to any Warrants registered pursuant to the Registration Statement, when (a) the Board and, if required, the Company's stockholders, have taken all necessary corporate action to approve the issuance and the terms of such Warrants, the terms, execution and delivery of the warrant agreement relating to the Warrants (" **Warrant Agreement** "), the terms of the offering thereof and related matters, including reservation for future issuance of a sufficient number of authorized shares of Class A Common Stock, Preferred Stock or other Securities into which such Warrants may be exercisable or convertible, (b) the Warrant Agreement has been duly authorized and validly executed and delivered, and (c) such Warrants have been duly executed, issued and delivered by duly authorized officers of the Company in accordance with the provisions of the applicable Warrant Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, as stated in the Registration Statement, the Prospectus, any Prospectus Supplement and any Free Writing Prospectus relating thereto (as amended as of the date of the offer for such issuance, sale and delivery), such Warrants will be validly issued and will constitute valid and binding obligations of the Company.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the Prospectus constituting a part thereof and any amendments thereto. In rendering the opinions set forth above, we are opining only as to the specific legal issues expressly set forth therein, and no opinion shall be inferred as to any other matter or matters.

[Concluding Paragraph Follows on Next Page]

This opinion is intended solely for use in connection with the issuance and sale of the Securities subject to the Registration Statement and is not to be relied upon for any other purpose. This opinion is rendered as of the date first written above and based solely on our understanding of facts in existence as of such date after the aforementioned examination. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Fenwick & West LLP

FACEBOOK, INC.
COMPUTATIONS OF RATIOS OF EARNINGS TO FIXED CHARGES
(Unaudited)

	Six Months Ended June 30, 2014	Year Ended December 31,				
(in millions)		2013	2012	2011	2010	2009
Fixed charges:						
Interest expense ⁽¹⁾	\$ 12	\$ 56	\$ 51	\$ 42	\$ 22	\$ 10
Capitalized interest	—	1	—	1	1	—
Portion of rental expense which represents interest factor	20	42	51	51	37	17
Total fixed charges	\$ 32	\$ 99	\$ 102	\$ 94	\$ 60	\$ 27
Earnings available for fixed charges:						
Income before provision for income taxes	\$ 2,460	\$ 2,754	\$ 494	\$ 1,695	\$ 1,008	\$ 254
Add: Fixed charges	32	99	102	94	60	27
Less: Capitalized interest	—	(1)	—	(1)	(1)	—
Total earnings available for fixed charges	\$ 2,492	\$ 2,852	\$ 596	\$ 1,788	\$ 1,067	\$ 281
Ratio of earnings to fixed charges	77.88	28.81	5.84	19.02	17.78	10.41

⁽¹⁾ Includes interest on credit facilities and capital leases, and amortization of debt issuance costs. Excludes interest income and interest associated with uncertain tax positions, which is recorded within provision for income taxes.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference of our firm under the caption “Experts” in the Registration Statement (Form S-3) and related Prospectus of Facebook, Inc. for the registration of its Class A Common Stock, Preferred Stock, Debt Securities and Warrants and the incorporation by reference therein of our reports dated January 31, 2014, with respect to the consolidated financial statements of Facebook, Inc. and the effectiveness of internal control over financial reporting of Facebook, Inc. included in its Annual Report (Form 10-K) for the year-ended December 31, 2013, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

San Francisco, California

October 29, 2014

CONSENT OF INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated June 6, 2014, with respect to the financial statements of WhatsApp Inc. included in the Current Report on Form 8-K/A of Facebook, Inc. dated October 28, 2014, which is incorporated by reference in the Registration Statement (Form S-3) and related Prospectus of Facebook, Inc. for the registration of its Class A Common Stock, Preferred Stock, Debt Securities and Warrants.

/s/ Ernst & Young LLP

San Francisco, California
October 28, 2014