

As Filed with the Securities and Exchange Commission on September 19, 1996

Registration No. 333-3580

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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AMENDMENT NO. 1  
TO  
FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
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CAPITAL ONE FINANCIAL CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware 54-1719854  
(State or other jurisdiction (I.R.S. employer identification no.)  
of incorporation or organization)

2980 Fairview Park Drive  
Falls Church, Virginia 22042-4525  
(703) 205-1000

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

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John G. Finneran, Jr.  
Senior Vice President,  
General Counsel and Corporate Secretary  
CAPITAL ONE FINANCIAL CORPORATION  
2980 Fairview Park Drive  
Falls Church, Virginia 22042-4525  
(703) 205-1000

(Name, address, including zip code, and telephone  
number, including area code, of agent for service)  
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Approximate date of commencement of proposed sale to public:

From time to time after the effective date of this Registration  
Statement, as determined in light of market conditions.

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, please check the following box. /X/

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

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CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per unit (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Debt Securities.....				
Preferred Stock.....	\$200,000,000(3)	100%	\$200,000,000	\$68,965
Depository Shares representing Preferred Stock(4).....				
Common Stock.....				

- (1) In U.S. dollars or equivalent thereof in other currencies, including composite currencies, on the basis of exchange rates on the date an agreement to issue and sell the applicable Debt Securities is entered into.
- (2) Estimated solely for the purpose of computing the registration fee.
- (3) Such amount represents the principal amount of any Debt Securities issued at their principal amount, the issue price, rather than the principal amount, of any Debt Securities issued at an original issue discount and the liquidation preference of any Preferred Stock.
- (4) Such indeterminate number of Depository Shares to be evidenced by Depository Receipts issued pursuant to a Deposit Agreement. In the event the Registrant elects to offer to the public fractional interests in shares of the Preferred Stock registered hereunder, Depository Receipts will be distributed to those persons purchasing such fractional interests and the shares of Preferred Stock will be issued to the Depository under the Deposit Agreement. No separate consideration will be received for the Depository Shares.

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

SUBJECT TO COMPLETION, DATED SEPTEMBER \_\_, 1996

\$200,000,000

CAPITAL ONE FINANCIAL CORPORATION

Debt Securities, Preferred Stock and Common Stock

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Capital One Financial Corporation (the "Company") from time to time may offer and sell (i) debt securities, consisting of debentures, notes and/or other unsecured evidences (the "Debt Securities"), which may be either unsecured senior Debt Securities (the "Senior Debt Securities") or unsecured subordinated Debt Securities (the "Subordinated Debt Securities"), (ii) preferred stock, par value \$.01 per share (the "Preferred Stock"), which may be issued in the form of depositary shares evidenced by depositary receipts (the "Depositary Shares") and (iii) common stock, par value \$.01 per share ("Common Stock"). The Debt Securities, Preferred Stock, including the Depositary Shares, and Common Stock are collectively referred to herein as the "Securities."

The Securities offered pursuant to this Prospectus may be issued in one or more series or issuances, together or separately, and will be limited to \$200,000,000 aggregate public offering price (or its equivalent (based on the applicable exchange rate at the time of sale) in one or more foreign currencies, currency units or composite currencies as shall be designated by the Company). The specific terms of the particular Securities in respect of which this Prospectus is being delivered will be set forth in an accompanying Prospectus Supplement, including, where applicable: (i) in the case of Debt Securities, the specific title, aggregate principal amount, the denominations (which may be in U.S. dollars, in any other currency or in composite currencies), maturity, premium, if any, the interest rate (which may be fixed, floating or adjustable), the time and method of calculating payment of interest, if any, the place or places where the principal of (and premium, if any) and interest, if any, on such Debt Securities will be payable, the currency in which principal of (and premium, if any) and interest, if any, on such Debt Securities will be payable, any terms of redemption at the option of the Company or the Holder, the terms of conversion or exchange into Common Stock or other Securities, any sinking fund provisions, the form of the Debt Securities (which may be in registered form or book-entry form), the initial public offering price and any other terms of such Debt Securities; (ii) in the case of Preferred Stock, the specific title, the aggregate amount, any dividends (including the method of calculating payment of dividends), liquidation, redemption, voting and other rights, the initial public offering price, the terms of conversion or exchange into Common Stock or other Securities and any other terms of such Preferred Stock; and (iii) in the case of Common Stock, the aggregate number of shares offered, the initial public offering price and any other terms thereof.

The Senior Debt Securities, when issued, will rank on a parity with all other unsecured and unsubordinated indebtedness of the Company, and the Subordinated Debt Securities, when issued, will be subordinated as described under "Description of Debt Securities - Subordination of Subordinated Debt Securities" herein.

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The Securities will be sold directly by the Company, through agents, underwriters or dealers as designated from time to time, or through a combination of such methods. If agents of the Company or any dealers or underwriters are involved in the sale of the Securities in respect of which this Prospectus is being delivered, the names of such agents, dealers or underwriters and any applicable commissions or discounts will be set forth in or may be calculated from the Prospectus Supplement with respect to such Securities. THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE SALES OF SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

THE SECURITIES WILL NOT BE DEPOSITS OR OTHER OBLIGATIONS OF ANY BANK OR NON-BANK SUBSIDIARY OF THE COMPANY AND WILL NOT BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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The date of this Prospectus is September \_\_, 1996

No person has been authorized to give any information or to make any representation other than those contained in this Prospectus and any accompanying Prospectus Supplement in connection with the offering described herein and therein, and, if given or made, such other information or representation must not be relied upon as having been authorized by the Company or by any underwriter, dealer or agent. Neither this Prospectus nor any Prospectus Supplement shall constitute an offer to sell or a solicitation of an offer to buy any securities offered hereunder in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation or sale in such jurisdiction. Neither the delivery of this Prospectus or any Prospectus Supplement nor any sale made hereunder implies that there has been no change in the affairs of the Company at any time subsequent to the date hereof or that the information herein is correct as of any time subsequent to its date.

#### AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy and information statements and other information, including the documents incorporated by reference herein, can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549; and at the Commission's regional offices at 7 World Trade Center, 13th Floor, New York, New York 10048 and Citicorp Center, Suite 1400, 500 West Madison Street, Chicago, Illinois 60661. Copies of such material can be obtained from the Public Reference Section of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. Such material also can be inspected at the office of the New York Stock Exchange, 20 Broad Street, New York, New York 10005. In addition, on May 7, 1996, the Company began filing its reports, proxy statements and other information electronically with the Commission. The Commission maintains a Web site at (<http://www.sec.gov>) that contains such reports, proxy and information statements and other information electronically filed with the Commission.

The Company has filed a registration statement on Form S-3 (herein, together with all amendments and exhibits, referred to as the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the securities offered hereby. 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 Commission.

#### INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

There are hereby incorporated by reference in this Prospectus the following documents and information heretofore filed with the Commission:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 1995 provided, however, that the information referred to in Item 402(a)(8) of Regulation S-K promulgated by the Commission shall not be deemed to be specifically incorporated by reference herein;
2. The Company's Current Reports on Form 8-K dated January 24, 1996 and July 2, 1996;
3. The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1996; and
4. The descriptions of the Company's Common Stock which are contained in the registration statements on Form 8-A filed on August 24, 1994 and November 16, 1995 by the Company to register such securities under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such descriptions.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of this Prospectus and prior to the termination of the offering of the Securities

hereby shall be deemed to be incorporated herein by reference. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus and the Registration Statement of which it is a part to the extent that a statement contained herein or in any other subsequently filed document which is also incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus or such Registration Statement.

The Company undertakes to provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus has been delivered, upon written or oral request of such person, a copy of any or all of the documents which have been or may be incorporated herein by reference, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference to such documents). Requests for such copies should be directed to Capital One Financial Corporation, Suite 1300, 2980 Fairview Park Drive, Falls Church, Virginia 22042-4525, Attention: Corporate Secretary, telephone number (703) 205-1000.

Capital One Financial Corporation (the "Company") is a financial services company, incorporated in Delaware on July 21, 1994, whose subsidiaries provide a variety of products to consumers. The Company's principal subsidiary, Capital One Bank (the "Bank"), a limited purpose Virginia state chartered credit card bank, offers credit card products. Capital One, F.S.B. (the "Savings Bank"), a federally chartered savings bank established in June 1996, provides certain lending and deposit services.

As of June 30, 1996, the Company had total assets of \$5.7 billion, total liabilities of \$5.0 billion and total equity of \$664 million. The principal asset of the Company is its equity interest in the Bank. As of June 30, 1996, the assets of the Bank constituted approximately 96% of the consolidated assets of the Company.

The Company is listed on the New York Stock Exchange under the symbol COF. The Company's principal executive office is located at 2980 Fairview Park Drive, Suite 1300, Falls Church, Virginia 22042-4525, (telephone number (703) 205-1000).

#### Capital One Bank

Prior to November 22, 1994, the Bank conducted its operations as a division of Signet Bank/Virginia, a wholly owned subsidiary of Signet Banking Corporation ("Signet"). The Bank, which includes Signet's credit card division for periods prior to November 22, 1994, is one of the oldest continually operating bank card issuers in the U.S., having commenced operations in 1953, the same year as the formation of what is now MasterCard International. It is among the ten largest issuers of Visa(R)\* and MasterCard(R)\* credit cards in the United States based on managed loans outstanding of \$ 11.2 billion at June 30, 1996. As of June 30, 1996, the Bank had approximately 7.8 million credit card accounts. The growth in managed loans and credit card accounts achieved by the Bank in recent years was due largely to credit card industry dynamics and the success of the Company's proprietary information-based strategy ("IBS") initiated in 1988. IBS is designed to allow the Bank to differentiate among customers based on credit risk, usage and other characteristics and to match customer characteristics with appropriate product offerings. See "-- Information-Based Strategy" herein.

The Bank offers two brands of credit cards, Visa(R) and MasterCard(R), and within each brand premium ("gold" cards) and standard credit card products, both unsecured and secured. Premium credit cards generally have higher lines of credit and additional ancillary benefits. Periodically, qualified standard accounts are offered the option to upgrade to premium accounts. Additionally, among the major bank card issuers, the Bank was one of the first to issue secured credit cards.

The Bank issues its products nationwide with different Annual Percentage Rate ("APR"), finance charge and fee combinations or other special features, such as a balance transfer option, depending on the risk profile and other characteristics of the targeted customer segment. Using information derived from proprietary statistical models, the Bank targets customers with a carefully matched combination of pricing, credit analysis and packaging. In setting terms for new solicitations, the Bank's pricing philosophy reflects a risk-based approach where customers with better credit qualifications generally merit more favorable pricing. Pricing parameters include a combination of APR, annual membership fees, past-due, overlimit, returned check, cash advance and other fees, corresponding credit limits and ancillary services. The Bank continues to test new pricing combinations targeted to different customer segments.

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\* MasterCard and Visa are registered trademarks of MasterCard International Incorporated and VISA USA, Inc., respectively.

Cardholders use the credit cards for three principal types of transactions: purchases, cash advances and check access to the credit line. Purchases with the card are the most frequent form of usage. Cash advances may be obtained at financial institutions or automated teller machines. Cardholders may also use special credit line checks issued by the Company to draw against their Visa or MasterCard credit lines for cash or purchases, or under balance transfer programs, to pay down other card balances. Currently, cardholders must generally make a monthly minimum payment as well as pay past-due amounts, overlimit amounts, any insurance payments and other fees.

Capital One, F.S.B.

In June 1996, the Company established the Savings Bank to provide certain consumer lending and deposit services. The Savings Bank issues secured and unsecured Visa(R) and MasterCard(R) credit cards, secured and unsecured installment loans and various home equity lending products in the United States. The Savings Bank uses the Company's IBS to test market various product offerings to different customer segments. As of June 30, 1996, the assets of the Savings Bank constituted less than 5% of the consolidated assets of the Company.

#### Information-Based Strategy

The Company's IBS is designed to allow the Company to differentiate among customers based on credit risk, usage and other characteristics and to match customer characteristics with appropriate product offerings. IBS involves developing sophisticated models, information systems, well-trained personnel and a flexible culture to create credit card or other products that address the demands of changing consumer and competitive markets. By using sophisticated statistical modeling techniques, the Company is able to segment its potential customer lists based upon the integrated use of credit scores, demographics, customer behavioral characteristics and other criteria. By actively testing a wide variety of product features, marketing channels and other aspects of its offerings, the Company can design and target customized solicitations at various customer segments, thereby enhancing customer response levels and maximizing returns on investment within given underwriting parameters. Continued integrated testing and model development builds on information gained from earlier phases and is intended to improve the quality, performance and profitability of the Company's solicitation and account management initiatives. The Company applies IBS to all areas of its business, including solicitations, account management, credit line management, pricing strategies, usage stimulation, collections, recoveries, and account and balance retention.

Historically, the Company has concentrated its efforts on, and applied IBS to, credit card opportunities at the Bank. However, the Company's strategy for future growth is to continue to apply its IBS to the Bank's credit card business, as well as to other businesses, both financial and non-financial, to identify new product opportunities. The Company has established the Savings Bank [and several non-bank operating subsidiaries] in which it will engage in non-card product businesses. The Company has conducted a number of test solicitations with respect to non-card products, including but not limited to home equity products, installment loans and auto loans. To date, only a relatively small dollar volume of assets have been generated as a result of such solicitations.

## USE OF PROCEEDS

Except as otherwise described in the applicable Prospectus Supplement, the net proceeds from the sale of the Securities hereby offered will be applied to the Company's general funds to be utilized for general corporate purposes, including the reduction of short-term debt, possible acquisitions, investments in, or extension of credit to, the Company's subsidiaries, investments in securities and the possible acquisition of real property for use in the Company's business.

## CERTAIN RATIOS

The following table sets forth the ratio of earnings to fixed charges of the Company for the periods indicated:

	Six Months Ended June 30,		Year Ended December 31,			
	-----		-----	-----	-----	
	1996	1995	1994	1993	1992	1991
	----	----	----	----	----	----
Earnings to Fixed						
Charges .....	1.95	1.78	2.55	3.46	2.58	2.22

The ratio of earnings to fixed charges is computed by dividing (i) income before income taxes and fixed charges less interest capitalized during such period, net of amortization of previously capitalized interest, by (ii) fixed charges. Fixed charges consist of interest expense on borrowings, including capitalized interest and the portion of rental expense which is deemed representative of interest.

## SUPERVISION, REGULATION AND OTHER MATTERS

The Bank is a banking corporation chartered under Virginia law and a member of the Federal Reserve System, the deposits of which are insured by the Bank Insurance Fund (the "BIF") of the Federal Deposit Insurance Corporation (the "FDIC"). The Bank is subject to comprehensive regulation and periodic examination by the Bureau of Financial Institutions of the Virginia State Corporation Commission (the "Bureau of Financial Institutions"), the Federal Reserve Board and the FDIC. The Company is not a bank holding company under the Bank Holding Company Act of 1956, as amended (the "BHCA"), as a result of the Company's ownership of the Bank because the Bank is not a "bank" as defined under the BHCA. The Bank is not a "bank" under the BHCA because it (i) engages only in credit card operations, (ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, (iii) does not accept any savings or time deposit of less than \$100,000, (iv) maintains only one office that accepts deposits, and (v) does not engage in the business of making commercial loans. If the Bank failed to meet the credit card bank exemption criteria described above, the Bank's status as an insured depository institution would make the Company subject to the provisions of the BHCA, including certain restrictions as to the types of business activities in which a bank holding company and its affiliates may engage. Becoming a bank holding company under the BHCA would affect the Company's ability to enter into certain non-card product businesses.

Due to the Bank's status as a limited purpose credit card bank, any non-credit card operations which may be conducted by the Company must be conducted in other operating subsidiaries of the Company. In addition, for purposes of the BHCA, if the Bank failed to qualify for the credit card bank exemption, any entity that acquired direct or indirect control of the Company and also engaged in activities not permitted for bank holding companies could be required either to discontinue the impermissible activities or to divest itself of control of the Company.

The Savings Bank is a federal savings bank chartered by the Office of Thrift Supervision (the "OTS") and is a member of the Federal Home Loan Bank System. Its deposits are insured by the Savings Association Insurance Fund of the FDIC; however, by virtue of an initial deposit assumption transaction



engaged in by the Savings Bank in June 1996 when it was established, virtually all of its deposits will be assessed at rates applicable to BIF members. The Savings Bank is subject to comprehensive regulation and periodic examination by the OTS and the FDIC. As a result of its ownership of the Savings Bank, the Company is a unitary savings and loan holding company subject to regulation by the OTS and the provisions of the Savings and Loan Holding Company Act. As a unitary savings and loan holding company, the Company generally is not restricted under existing laws as to the types of business activities in which it may engage so long as the Savings Bank continues to meet the Qualified Thrift Lender Test. See "-- Investment Limitations and Qualified Thrift Lender Test" below.

The Company is also registered as a financial institution holding company under Virginia law and as such is subject to periodic examination by the Bureau of Financial Institutions.

The earnings of the Company, are affected by general economic conditions, management policies and the legislative and governmental actions of various regulatory agencies, including the Bureau of Financial Institutions, the Federal Reserve Board, the FDIC and the OTS. In addition, there are numerous governmental requirements and regulations which affect the activities of the Company.

#### Dividends and Transfers of Funds

There are various federal and Virginia law limitations on the extent to which the Bank and the Savings Bank can finance or otherwise supply funds to the Company and its affiliates through dividends, loans or otherwise. These limitations include minimum regulatory capital requirements, Federal Reserve Board, OTS and Virginia law requirements concerning the payment of dividends out of net profits or surplus, Sections 23A and 23B of the Federal Reserve Act governing transactions between an insured depository institution and its affiliates and general federal and Virginia regulatory oversight to prevent unsafe or unsound practices. In general, federal banking laws prohibit an insured depository institution such as the Bank and the Savings Bank from making dividend distributions if such distributions are not paid out of available earnings or would cause the institution to fail to meet applicable capital adequacy standards, including, in the case of the Savings Bank, minimum requirements set forth in the Order of the OTS approving its organization. In addition, under Virginia law, the Bureau of Financial Institutions may limit the payment of dividends by the Bank if the Bureau of Financial Institutions determines that such a limitation would be in the public interest and necessary for the Bank's safety and soundness.

#### Exportation of Interest Rates and Fees

Under current judicial interpretations of the Depository Institutions Deregulation and Monetary Control Act of 1980 (ODIDMCAO), state-chartered institutions such as the Bank and federally chartered savings banks such as the Savings Bank may charge interest at the rate allowed by the laws of the state where the institution is located notwithstanding any state constitution or statute to the contrary. In 1978, a statute similar to DIDMCA applicable to national banks was interpreted by the United States Supreme Court to permit a national bank to "export" interest rates by charging the interest rate allowed by the laws of the state where the bank is located on loans to borrowers in other states, notwithstanding the laws of such other states. Similarly, in 1996, the United States Supreme Court in upholding a California Supreme Court decision, ruled that national banks, under a statute similar to DIDMCA, may export charges other than the numerical interest rate, such as late fees, annual fees, cash advance fees, overlimit fees and returned check fees. In addition, the United States Supreme Court reversed and remanded a New Jersey Supreme Court decision respecting a state-chartered bank for treatment consistent with its decision in the California case. As a result, it is believed that state-chartered institutions such as the Bank and federally chartered savings banks such as the Savings Bank are permitted to export interest rates and other charges pursuant to DIDMCA.

The Bank and the Savings Bank are currently subject to capital adequacy guidelines adopted by the Federal Reserve Board and the OTS, respectively. In the case of the Bank these include a minimum ratio of Tier 1 capital to risk-weighted assets of 4%, a minimum ratio of Tier 1 capital plus Tier 2 capital to risk-weighted assets of 8% and a minimum "leverage ratio" of Tier 1 capital to average total tangible assets of 4%. Bank regulators, however, have broad discretion in applying higher capital requirements. Bank regulators consider a range of factors when determining capital adequacy, such as the organization's size, quality and stability of earnings, interest rate risk exposure, risk diversification, management expertise, asset quality, liquidity and internal controls. At June 30, 1996, the Bank's risk-based Tier 1 capital ratio was 10.97%, its risk-based total capital ratio was 12.23% and its Tier 1 leverage ratio was 9.91%.

The Savings Bank is currently subject to capital adequacy guidelines adopted by the OTS, including a minimum ratio of "leverage or core" capital to adjusted total assets of 3%, a minimum ratio of "tangible" capital (core capital less certain intangible assets) to adjusted total assets of 1.5% and a minimum ratio of "total" capital to risk-weighted assets of 8%. In addition, the Savings Bank is subject for the first three years of its operations to additional capital requirements, including the requirement to maintain a minimum core capital ratio of 8% and a risk-based capital ratio of at least 12%. As described above, the OTS has broad discretion to apply higher capital requirements. At June 30, 1996, the Savings Bank's tangible capital ratio was 9.51%, its risk-based capital ratio was 483.15% and its core capital ratio was 9.51%, which reflects the start-up nature of its operations. Failure to meet applicable capital guidelines could subject the Bank and the Savings Bank to a variety of enforcement remedies available to federal regulatory authorities.

In addition, in connection with the Bank's establishment of a branch office in the United Kingdom, the Company committed to the Federal Reserve Board that, for so long as the Bank maintains such branch in the United Kingdom, the Company will maintain a minimum Tier 1 leverage ratio of 3.0%. At June 30, 1996, the Company's Tier 1 leverage ratio was 13.54%.

#### FDICIA and FIRREA

Among other things, the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") requires federal bank regulatory authorities to take "prompt corrective action" in respect of insured depository institutions that do not meet minimum capital requirements. FDICIA establishes five capital ratio levels: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Under applicable regulations, an insured depository institution is considered to be well capitalized if it maintains a Tier 1 risk-based capital ratio (or core capital to risk-adjusted assets in the case of the Savings Bank) of at least 6%, a total risk-based capital ratio of at least 10% and a Tier 1 leverage capital ratio (or core capital ratio in the case of the Savings Bank) of at least 5%, and is not otherwise in a "troubled condition" as specified by its appropriate federal regulatory agency. An insured depository institution is considered to be adequately capitalized if it maintains a Tier 1 risk-based capital ratio (or core capital to risk-adjusted assets in the case of the Savings Bank) of at least 4%, total risk-based capital ratio of at least 8%, and a Tier 1 leverage capital ratio (or core capital ratio in the case of the Savings Bank) of at least 4% (3% for certain highly rated institutions), and does not otherwise meet the well capitalized definition. The three undercapitalized categories are based upon the amount by which the insured depository institution falls below the ratios applicable to adequately capitalized institutions. The capital categories are determined solely for the purposes of applying FDICIA's prompt corrective action ("PCA") provisions, as discussed below, and such capital categories may not constitute an accurate representation of the overall financial condition or prospects of the Bank or the Savings Bank.

At June 30, 1996 the Bank and the Savings Bank met the requirements for a "well capitalized" institution. A "well capitalized" classification should not necessarily be viewed as describing the condition or future prospects of a depository institution, including the Bank and the Savings Bank.

Under FDICIA's PCA system, an insured depository institution in the undercapitalized category must submit a capital restoration plan guaranteed by its parent company. The liability of the parent company under any such guarantee is limited to the lesser of 5% of the insured depository institution's assets at the time it became undercapitalized, or the amount needed to comply with the plan. An insured depository institution in the undercapitalized category also is subject to limitations in numerous areas including, but not limited to, asset growth, acquisitions, branching, new business lines, acceptance of brokered deposits and borrowings from the Federal Reserve. Progressively more burdensome restrictions are applied to insured depository institutions in the undercapitalized category that fail to submit or implement a capital plan and to insured depository institutions that are in the significantly undercapitalized or critically undercapitalized categories. In addition, an insured depository institution's primary federal banking agency is authorized to downgrade the institution's capital category to the next lower category upon a determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice. An unsafe or unsound practice can include receipt by the institution of a less than satisfactory rating on its most recent examination with respect to its asset quality, management, earnings or liquidity.

"Critically undercapitalized" insured depository institutions (which are defined to include institutions that still have a positive net worth) may not, beginning 60 days after becoming "critically undercapitalized" make any payment of principal or interest on their subordinated debt (subject to certain limited exceptions). Thus, in the event an institution became "critically undercapitalized," it would generally be prohibited from making payments on its subordinated debt securities. In addition, "critically undercapitalized" institutions are subject to appointment of a receiver or conservator.

FDICIA requires the federal banking agencies to review the risk-based capital standards to ensure that they adequately address interest-rate risk, concentration of credit risk and risks from non-traditional activities. The OTS amended its risk-based capital rules to incorporate interest-rate risk requirements under which a savings bank must hold additional capital if it projects an excessive decline in "net portfolio value" in the event interest rates increase or decrease by two percentage points. These standards are not yet in effect.

FDICIA also requires the FDIC to implement a system of risk-based premiums for deposit insurance pursuant to which the premiums paid by a depository institution will be based on the probability that the FDIC will incur a loss in respect of such institution. The FDIC has since adopted a system that imposes insurance premiums based upon a matrix that takes into account an institution's capital level and supervisory rating.

The Bank and the Savings Bank may accept brokered deposits as part of their funding. Under FDICIA, only "well capitalized" and "adequately capitalized" institutions may accept brokered deposits. "Adequately capitalized" institutions, however, must first obtain a waiver from the FDIC before accepting brokered deposits and such deposits may not pay rates that significantly exceed the rates paid on deposits of similar maturity from the institution's normal market area or the national rate on deposits of comparable maturity, as determined by the FDIC, for deposits from outside the institution's normal market area.

Under the "cross-guarantee" provision of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), insured depository institutions such as the Bank and the Savings Bank may be liable to the FDIC in respect of any loss or anticipated loss incurred by the FDIC resulting from the default of, or FDIC assistance to, any commonly controlled insured depository institution. The Bank and the Savings Bank are commonly controlled within the meaning of the FIRREA cross guarantee provision.

## Investment Limitations and Qualified Thrift Lender Test

Federally-chartered savings banks such as the Savings Bank are subject to certain investment limitations. For example, federal savings banks are permitted to make consumer loans (i.e., open-end or closed-end loans for personal, family or household purposes, such as installment loans) of up to 35 percent of the savings bank's assets. Federal savings banks are also required to meet the qualified thrift lender test (the "QTL Test"), which generally requires a savings bank to maintain at least 65 percent "portfolio assets" (total assets less (i) specified liquid assets up to 20% of total assets, (ii) intangibles, including goodwill, and (iii) property used to conduct business) in certain "qualified thrift investments" (primarily residential mortgages and related investments, including certain mortgage-backed and mortgage-related investments) on a monthly basis in 9 out of every 12 months. Failure to qualify under the QTL Test could subject the Savings Bank to substantial restrictions on its activities and to certain other penalties, and could subject the Company to the provisions of the BHCA, including the activity restrictions that apply generally to bank holding companies and their affiliates. The Savings Bank has been granted a two-year exception from the QTL Test, but must be in full compliance with the test by June 30, 1998.

## Appointment of New Directors

Pursuant to federal regulations, for a period of two years following the later of its organization or a subsequent "change in control" or in the event that it becomes undercapitalized or otherwise in a troubled condition, an insured depository institution is required to give its federal bank regulator written notice at least 30 days prior to the effective date of any new director (as well as the employment or change in responsibilities of any individual to a position as a senior executive officer). A proposed director (or senior executive officer) may begin service upon the expiration of the 30-day period following acceptance of a complete notice, unless the federal bank regulator issues a notice of disapproval before the end of the 30-day period.

## Lending Activities

The activities of the Bank and the Savings Bank as consumer lenders are also subject to regulation under various federal laws including the Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Community Reinvestment Act and the Soldiers' and Sailors' Civil Relief Act, as well as to various state laws. Regulators are authorized to impose penalties for violations of these statutes and, in certain cases, to order the Bank to pay restitution to injured borrowers. Borrowers may also bring actions for certain violations. Federal and state bankruptcy and debtor relief laws also affect the ability of the Bank and the Savings Bank to collect outstanding balances owed by borrowers who seek relief under these statutes.

## Legislation

From time to time legislation has been proposed in Congress to limit interest rates that could be charged on credit card accounts; however, the Company does not anticipate any serious effort by Congress to enact such a limitation in the current session of Congress. Legislation has also been proposed in Congress to limit the circumstances under which consumer reporting agencies could disclose customer information to direct marketers, including direct marketers of credit card and other lending products. Congress may in the future consider other legislation that would affect the banking or credit card industries. Various bills have also been introduced that would merge the Bank Insurance Fund and the Savings Association Insurance Fund of the FDIC, and eliminate a separate savings bank charter possibly requiring that existing savings banks become banks and repeal in some respects the provisions of the Glass-Steagall Act prohibiting certain banking organizations from engaging in certain securities activities and the provisions of the BHCA prohibiting affiliations between banking organizations and nonbanking organizations. It is unclear at this time whether and in what form any such legislation will be adopted or, if adopted, what its impact on the Bank, the Savings Bank or the Company would be.

## Investment in the Company

Certain acquisitions of capital stock may be subject to regulatory approval or notice under federal or Virginia law. Investors are responsible for insuring that they do not directly or indirectly, acquire shares of capital stock of the Company in excess of the amount which can be acquired without regulatory approval.

Although the Bank qualifies for the credit card bank exemption under the BHCA, it is still an "insured depository institution" within the meaning of the Change in Bank Control Act. The Savings Bank is also an "insured depository institution" within the meaning of that Act. Consequently, federal law and regulations will prohibit any person or company from acquiring control of the Company without, in most cases, prior written approval of the Federal Reserve Board and the OTS. Control is conclusively presumed if, among other things, a person or company acquires more than 25% of any class of voting stock of the Company. A rebuttable presumption of control arises if a person or company acquires more than 10% of any class of voting stock and is subject to any of a number of specified "control factors" as set forth in the applicable regulations.

## Interstate Banking and Branching

Although the Bank is not a "bank" within the meaning of Virginia's reciprocal interstate banking legislation (Chapter 15 of Title 6.1 of the Code of Virginia), it is a "bank" within the meaning of Chapter 13 of Title 6.1 of the Code of Virginia governing the acquisition of interests in Virginia financial institutions (the "Financial Institution Holding Company Act"). The Financial Institution Holding Company Act prohibits any person or entity from acquiring or making any public offer to acquire control of a Virginia financial institution or its holding company without making application to and receiving the prior approval of the Bureau of Financial Institutions.

On September 29, 1994, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle Act") became law. Under the Riegle Act, the Federal Reserve Board may approve bank holding company acquisitions of banks in other states, subject to certain aging and deposit concentration limits. Commencing June 1, 1997 (or earlier if a particular state chooses), banks in one state may merge with banks in another state, unless the other state has chosen not to implement this section of the Riegle Act. These mergers are also subject to similar aging and deposit concentration limits.

Virginia has "opted-in" early to the provisions of the Riegle Act. Effective July 1, 1995, an out-of-state bank that does not already maintain a branch in Virginia may establish and maintain a de novo branch in Virginia, or through the acquisition of a branch, if the laws of the home state of the out-of-state bank permit Virginia banks to engage in the same activities in that state under substantially the same terms as permitted by Virginia. Also, Virginia banks may merge with out-of-state banks, and an out-of-state bank resulting from such an interstate merger transaction may maintain and operate the branches in Virginia of a merged Virginia bank, if the laws of the home state of the out-of-state bank involved in the interstate merger transaction permit interstate merger. An out-of-state bank desiring to engage in such activities must file an application with the State Corporation Commission. It is unclear at this time whether other states will enact the requisite legislation to permit such activities in Virginia, and, if adopted, how the legislation would impact the Bank or the Company.

Federal savings banks, such as the Savings Bank, may establish, subject to the approval of the OTS, branches outside of the state in which it has its home office provided that such savings bank qualifies as a domestic building and loan association under the Internal Revenue Code and meets certain other legal and regulatory requirements, including with respect to capital adequacy.

Several states have passed legislation which attempts to tax the income from interstate financial activities, including credit cards, derived from accounts held by local state residents. Based on the volume of its business in these states and the nature of the legislation passed to date, the Company currently believes that this development will not materially affect the financial condition of the Company.

#### DESCRIPTION OF DEBT SECURITIES

The Senior Debt Securities are to be issued under an Indenture (the "Senior Indenture") between the Company and [\_\_\_\_\_], as trustee (the "Senior Trustee"). The Subordinated Debt Securities are to be issued under an Indenture (the "Subordinated Indenture") between the Company and [\_\_\_\_\_], as trustee (the "Subordinated Trustee"). Copies of the Senior Indenture and the Subordinated Indenture have been filed with the Commission as exhibits to the Registration Statement. The Senior Indenture and the Subordinated Indenture are sometimes referred to collectively as the "Indentures" and the Senior Trustee and the Subordinated Trustee are sometimes referred to collectively as the "Trustees." The following summaries of the provisions of the Debt Securities and the Indentures do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all the provisions of the Indenture applicable to a particular series of Debt Securities (the "Applicable Indenture"), including the definitions therein of certain terms. Article and Section references used herein are references to the Applicable Indenture. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Applicable Indenture.

The following sets forth certain general terms and provisions of the Debt Securities offered hereby. The particular terms of the Debt Securities offered by any Prospectus Supplement (the "Offered Debt Securities") will be described in the Prospectus Supplement relating to such Offered Debt Securities (the "Applicable Prospectus Supplement").

The Company's right to participate as a stockholder in any distribution of assets of any subsidiary upon its liquidation or reorganization or winding-up (and thus the ability of Holders of the Debt Securities to benefit, as creditors of the Company, from such distribution) is subject to the prior claims of creditors of any such subsidiary. The Bank and the Savings Bank are subject to claims by creditors for long-term and short-term debt, obligations, including deposit liabilities, obligations for federal funds purchased and securities sold under repurchase agreements. There are also various legal limitations on the extent to which the Bank and the Savings Bank may pay dividends or otherwise supply funds to the Company or its affiliates. See "Supervision, Regulation and Other Matters -- Dividends and Transfer of Funds" herein.

#### General

The Indentures do not limit the amount of Debt Securities that may be issued thereunder and provide that Debt Securities may be issued thereunder from time to time in one or more series. The Debt Securities will be unsecured obligations of the Company.

Neither the Indentures nor the Debt Securities will limit or otherwise restrict the amount of indebtedness which may be incurred or other securities which may be issued by the Company. The Debt Securities issued under the Senior Indenture will rank on parity with all other unsecured unsubordinated indebtedness of the Company. The Debt Securities issued under the Subordinated Indenture will be subordinate and junior in right of payment to all Senior Indebtedness of the Company to the extent and in the manner set forth in the Subordinated Indenture. See "-- Subordination of Subordinated Debt Securities" herein. Reference is made to the Applicable Prospectus Supplement for information with respect to any deletions from, modifications of or additions to the Events of Default or covenants of the Company described below that are applicable to the Debt Securities, including any addition of covenants or other provisions providing event risk or similar protection.

The Applicable Prospectus Supplement will describe the following terms of the Offered Debt Securities: (1) the title and series of the Offered Debt Securities; (2) whether the Offered Debt Securities are Senior Debt Securities or Subordinated Debt Securities; (3) any limit upon the aggregate principal amount of the Offered Debt Securities; (4) the price or prices (expressed as a percentage of the aggregate principal amount thereof) at which such Debt Securities will be issued; (5) the date or dates on which the principal of the Offered Debt Securities will mature, or the method or methods, of any, by which such date or dates shall be determined; (6) the rate or rates (which may be fixed or variable) at which the Offered Debt Securities will bear interest, if any, and the date or dates from which any such interest, if any, will accrue; (7) the dates on which such interest, if any, on the Offered Debt Securities will be payable and the Regular Record Dates for such Interest Payment Dates; (8) the place or places where the principal of and any premium and interest on the Offered Debt Securities shall be payable; (9) any mandatory or optional sinking funds or analogous provisions; (10) the date, if any, after which and the price or prices at which the Offered Debt Securities may, pursuant to any optional or mandatory redemption provisions, be redeemed and the other detailed terms and provisions of any such optional or mandatory redemption provision; (11) the obligation of the Company, if any, to redeem or repurchase the Offered Debt Securities at the option of the Holder; (12) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Offered Debt Securities shall be issuable; (13) if other than the principal amount thereof, the portion of the principal amount of the Offered Debt Securities that will be payable upon the declaration of acceleration of the Maturity thereof; (14) the currency of payment of principal of and any premium and interest on the Offered Debt Securities; (15) any index used to determine the amount of payment of principal of and any premium and interest on the Offered Debt Securities; (16) if the Offered Debt Securities will be issuable only in temporary or permanent global form, the Depositary or its nominee with respect to the Offered Debt Securities and the circumstances under which the global Debt Security may be registered for transfer or exchange in the name of a Person other than the Depositary or its nominee; (17) whether any of the Debt Securities will be issued in bearer form and, if so, any limitations on issuance of such bearer Debt Securities (including exchange for registered Debt Securities of the same series); (18) the applicability, if any, of the provisions described under "Defeasance and Covenant Defeasance" herein; (19) any additional Event of Default, and in the case of any Offered Subordinated Debt Securities, any additional Event of Default that would result in the acceleration of the maturity thereof; (20) whether such Debt Securities shall be convertible into or exchangeable for Common Stock or other Securities and, if so, the terms of such conversion or exchange and the terms of such other Securities; and (21) any other terms of the Offered Debt Securities. (Section 301 of each Indenture).

Debt Securities may be issued as Original Issue Discount Securities to be offered and sold at a substantial discount below their stated principal amount. Federal income tax consequences and other special considerations applicable to any such Original Issue Discount Securities will be described in the Applicable Prospectus Supplement. "Original Issue Discount Security" means any Debt Security which provides for declaration of an amount less than the principal face amount thereof to be due and payable upon acceleration of the Maturity thereof upon the occurrence of an Event of Default and the continuation thereof.

#### Registration, Transfer, Payment and Paying Agent

Unless otherwise indicated in the Applicable Prospectus Statement, each series of Debt Securities will be issued in registered form only, without coupons. The Indentures, however, provide that the Company may also issue Debt Securities in bearer form only, or in both registered and bearer form. Debt Securities issued in bearer form shall have interest coupons attached, unless issued as Original Issue Discount Securities. Debt Securities in bearer form shall not be offered, sold, resold or delivered in connection with their original issuance in the United States or to any United States person (as defined below) other than through offices located outside the United States of certain United States financial institutions. As used herein, "United States person" means any citizen or resident of the United States, any corporation, partnership, or other entity created or organized in or under the laws of the United States, or any estate or trust, the income of which is subject to United States federal income taxation regardless of its source, and "United States" means the United States of America (including the States and the District of

Columbia), its territories, its possessions and other areas subject to its jurisdiction. Purchasers of Debt Securities in bearer form will be subject to certification procedures and may be affected by certain limitations under United States tax laws. Such procedures and limitations will be described in the Applicable Prospectus Supplement.

Unless otherwise indicated in the Applicable Prospectus Supplement, Debt Securities will be issued in denominations of \$1,000 or any integral multiple thereof. No service charge will be made for any transfer, exchange or conversion of the Debt Securities but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Unless otherwise described in the Applicable Prospectus Supplement, the principal, premium, if any, and interest, if any, of or on the Debt Securities will be payable and transfer of the Debt Securities will be registrable at the office or agency of the Company maintained for that purpose, as the Company may designate from time to time in the City of New York, New York, provided that payments of interest may be made at the option of the Company by check mailed to the address appearing in the Security Register of the person in whose name such registered Debt Security is registered at the close of business on the Regular Record Date (Sections 305 and 307 of each Indenture).

Unless otherwise indicated in the Applicable Prospectus Supplement, payment of principal of, premium, if any, and interest, if any, on Debt Securities in bearer form will be made payable, subject to any applicable laws and regulations, at such office outside the United States as specified in the Applicable Prospectus Supplement and as the Company may designate from time to time, at the option of the Holder, by check or by transfer to an account maintained by the payee with a bank located outside the United States. Unless otherwise indicated in the Applicable Prospectus Supplement, payment of interest and certain additional amounts on Debt Securities in bearer form will be made only against surrender of the coupon relating to such Interest Payment Date. No payment with respect to any Debt Security in bearer form will be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States.

#### Global Debt Securities

The Debt Securities of a series may be issued in whole or in part in the form of one or more global securities ("Global Debt Securities") that will be deposited with, or on behalf of, a depository (the "Depository") identified in the Applicable Prospectus Supplement. In such case, one or more Global Debt Securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal amount of Outstanding Debt Securities of the series to be represented by such Global Debt Security or Securities. Global Debt Securities may be issued in either registered or bearer form and in either temporary or permanent form. Unless and until it is exchanged in whole or in part for individual certificates evidencing Debt Securities in definitive form represented thereby, a Global Debt Security may not be transferred except as a whole by the Depository for such Global Debt Security 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 of such Depository or a nominee of such successor.

The specific terms of the depository agreement with respect to a series of Global Debt Securities and certain limitations and restrictions relating to a series of Bearer Global Debt Securities will be described in the Applicable Prospectus Supplement.



## Subordination of Subordinated Debt Securities

Unless otherwise indicated in the Applicable Prospectus Supplement, the following provisions shall apply to the Subordinated Debt Securities. The following Section references are to Sections of the Subordinated Indenture.

Upon any distribution of assets of the Company resulting from any dissolution, winding up, liquidation or reorganization, payments on Subordinated Debt Securities are to be subordinated, to the extent provided in the Subordinated Indenture, in right of payment to the prior payment in full of all Senior Indebtedness, but the obligation of the Company to make payments on the Subordinated Debt Securities will not otherwise be affected. No payment on Subordinated Debt Securities may be made at any time when there is a default in the payment of any principal, premium, interest, Additional Amounts or any sinking fund on any Senior Indebtedness. Holders of Subordinated Debt Securities will be subrogated to the rights of Holders of Senior Indebtedness to the extent of payments made on Senior Indebtedness upon any distribution of assets in any such proceedings out of the distributive shares of Subordinated Debt Securities.

By reason of such subordination, in the event of the insolvency of the Company, certain creditors of the Company may recover more, ratably, than Holders of Subordinated Debt Securities.

"Senior Indebtedness" means the principal of and premium if any, and interest on the following, whether outstanding at the date hereof or thereafter incurred or created: (a) indebtedness of the Company for money borrowed (including any indebtedness secured by a mortgage or other lien which is (i) given to secure all or part of the purchase price of property subject thereto, whether given to the vendor of such property or to another or (ii) existing on property at the time of acquisition thereof) evidenced by notes or other written obligations, except such indebtedness as is by its terms expressly stated to be not superior in right of payment to the Securities or to rank *pari passu* or is identified in a Board Resolution or any indenture supplemental hereto as not superior in right of payment or to rank *pari passu* with the Securities; (b) indebtedness of the Company evidenced by notes, debentures, bonds or other securities sold by the Company for money; (c) indebtedness of others of the kinds described in either of the preceding clauses (a) or (b) assumed by or guaranteed in any manner by the Company or in effect guaranteed by the Company through an agreement to purchase, contingent or otherwise; and (d) renewals, extensions or refundings of indebtedness of the kinds described in any of the preceding clauses (a), (b) and (c) unless, in the case of any particular indebtedness, renewal, extension or refunding, the instrument creating or evidencing the same or the assumption or guarantee of the same expressly provides that such indebtedness, renewal, extension or refunding is not superior in right of payment to the Securities. (Section 101 of the Subordinated Indenture).

## Conversion and Exchangeability

The holders of Debt Securities of a specified series that are convertible into Common Stock or other Securities ("Convertible Debt Securities") will be entitled at certain times specified in the Applicable Prospectus Supplement relating to such Convertible Debt Securities, subject to prior redemption, exchange, repayment or repurchase, to convert any Convertible Debt Securities of such series into Common Stock or other Securities, at the conversion price set forth in the Applicable Prospectus Supplement, subject to adjustment and to such other terms as are set forth in such Applicable Prospectus Supplement.

The holders of Debt Securities of any series may be obligated at any time or at maturity to exchange them for Common Stock or other Securities of the Company. The terms of any such exchange and any such Common Stock or other Securities will be described in the Applicable Prospectus Supplement relating to such series of Debt Securities.

## Certain Covenants

**CORPORATE EXISTENCE.** Except as permitted under "Consolidation, Merger and Sale of Assets," the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existences of each Significant Subsidiary and its rights (charter or statutory) and franchises and those of each Significant Subsidiary; provided, however, that neither the Company nor any Significant Subsidiary will be required to preserve any right or franchise if the Company or such Significant Subsidiary determines that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Holders. (Section 1007 of each Indenture).

**LIMITATION ON DISPOSITION OF SIGNIFICANT SUBSIDIARIES.** Each of the Indentures contains a covenant by the Company limiting its ability to dispose of the Voting Stock of a Significant Subsidiary. A "Significant Subsidiary" is defined to mean any Subsidiary of the Company the Consolidated Assets of which constitute 20% or more of the Company's Consolidated Assets. Such covenant provides that, subject to certain exceptions, so long as any of the Debt Securities are outstanding, the Company: (a) will not, nor will it permit any Subsidiary to, sell, assign, transfer or otherwise dispose of any shares of, securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary, nor will the Company permit a Significant Subsidiary to issue any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of Voting Stock of a Significant Subsidiary (other than sales of directors qualifying shares) unless the Company will own, directly or indirectly, at least 80% of the issued and outstanding Voting Stock of such Subsidiary after giving effect to such transaction, or (b) will not permit a Significant Subsidiary to either (i) merge or consolidate with or into any corporation (other than the Company), unless at least 80% of the surviving corporation's Voting Stock is, or upon consummation of the merger or consolidation will be, owned, directly or indirectly, by the Company, or (ii) lease, sell or transfer all or substantially all of its properties and assets to any corporation or other person (other than the Company), unless 80% of the Voting Stock of such corporation or other person is owned, or will be owned, upon such lease, sale or transfer, directly or indirectly, by the Company; provided, however, that nothing in the Indenture covenants shall prohibit the Company or a Significant Subsidiary from the sale or transfer of assets pursuant to any securitization transaction. (Section 1005 of each Indenture).

**LIMITATION ON CREATION OF LIENS.** So long as any of the Debt Securities shall be outstanding, the Company will not, nor will it permit any Subsidiary to, create, assume, incur or suffer to be created, assumed or incurred or to exist any pledge, encumbrance or lien, as security for indebtedness for borrowed money, upon any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary, directly or indirectly, without making effective provision whereby the Debt Securities of all series shall be equally and ratably secured with any and all such indebtedness if, treating such pledge, encumbrance or lien as a transfer of the shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock subject thereto to the secured party and to the issuance of the maximum number of shares of Voting Stock of such Significant Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, such Significant Subsidiary would not continue to be a Controlled Subsidiary. (Section 1006 of each Indenture).

**ADDITIONAL COVENANTS.** Any additional covenants of the Company with respect to any series of Debt Securities will be set forth in the Prospectus Supplement.

## Events of Default

The Senior Indenture (with respect to any series of Senior Debt Securities) and, unless otherwise provided in the Applicable Prospectus Supplement, the Subordinated Indenture (with respect to any series of Subordinated Debt Securities) define an Event of Default as any of the following events: (a) default in the payment of any interest or any Additional Amounts payable in respect of any Debt Security when it

becomes due and payable, and continuance of such default for a period of 30 days (in the case of the Subordinated Indenture, whether or not payment is prohibited by the subordination provisions); (b) default in the payment of the principal of (or premium, if any, on) any Debt Security at its Maturity (in the case of the Subordinated Indenture, whether or not payment is prohibited by the subordinated provisions); (c) default in the deposit of any sinking fund payment when due (in the case of the Subordinated Indenture, whether or not payment is prohibited by the subordinated provisions); (d) default in the performance of any other covenants or warranties of the Company in the Applicable Indenture (other than a covenant or warranty included in the Applicable Indenture solely for the benefit of a series of Debt Securities thereunder other than that series) continued for a period of 60 days after the Holders of at least 25% in principal amount of the Outstanding Debt Securities shall have given written notice as provided in the Applicable Indenture; (e) any event of default under any mortgage, indenture or other instrument under which any indebtedness for borrowed money in an aggregate principal amount exceeding \$10,000,000 of the Company or any Significant Subsidiary shall become due and payable, if such acceleration is not rescinded or annulled within 30 days after written notice as provided in the Applicable Indenture; (f) certain events of bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary, and (g) any other Event of Default provided with respect to Debt Securities of that series. If an Event of Default occurs with respect to Debt Securities of any series, the Trustee under the Applicable Indenture shall give the Holders of Debt Securities of such series notice of such default, provided however, that in the case of a default described in (d) above, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. (Section 501 of each Indenture).

If an Event of Default with respect to the Senior Debt Securities of any series at the time Outstanding occurs and is continuing, either the Senior Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of that series may declare the principal amount (or, if the Debt Securities of that series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms thereof) of all the Senior Debt Securities of that series to be due and payable immediately. Payment of the principal of the Subordinated Debt Securities may be accelerated only in the case of certain events of bankruptcy, insolvency or reorganization of the Company. The Subordinated Trustee and the Holders will not be entitled to accelerate the maturity of the Subordinated Debt Securities upon the occurrence of any of the Events of Default described above except for those described in subparagraph (f) above the previous paragraph (i.e., the bankruptcy, insolvency or reorganization of the Company). Accordingly, there is no right of acceleration in the case of a default in the performance of any covenant with respect to the Subordinated Debt Securities, including the payment of interest or principal. At any time after a declaration of acceleration with respect to Debt Securities of any series has been made, but before a judgment or decree based on acceleration has been obtained, the Holders of not less than a majority in aggregate principal amount of Outstanding Debt Securities of that series may, under certain circumstances, rescind and annul such declaration. (Section 502 of each Indenture).

The Indentures provide that, subject to the duty of the Trustee during default to act with the required standard of care, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders, unless such Holders shall have offered to the Trustee reasonable indemnity. (Section 601 of each Indenture). Subject to such provisions for the indemnification of the Trustee and to certain other conditions, the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Debt Securities of that series. (Section 512 of each Indenture).

No Holder of any series of Debt Securities will have any right to institute any proceeding with respect to the Applicable Indenture or for the appointment of a receiver or a trustee, or for any remedy thereunder, unless such Holder shall have previously given to the Trustee under the Applicable Indenture written notice of a continuing Event of Default and unless the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of that series shall have made written request, and

offered reasonable indemnity, to the Trustee to institute such proceeding as trustee, and the Trustee shall not have received from the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of that series a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. (Section 507 of each Indenture). However, such limitations do not apply to a suit instituted on such Debt Security on or after the respective due dates expressed in such Debt Security and to convert any Debt Security which is a Convertible Debt Security (as defined herein), and to institute suit for the enforcement of any such rights to payment or conversion. (Section 508 of each Indenture).

The Company is required under each Indenture to furnish to the Trustee annually a statement as to the performance by the Company of certain of its obligations under such indenture and as to any default in such performance. (Section 1004 of each Indenture).

#### Defeasance and Covenant Defeasance

The Indentures provide, if such provision is made applicable to the Debt Securities of any series pursuant to Section 301 of the Applicable Indenture (which will be indicated in the Applicable Prospectus Supplement), that the Company may elect to pay and discharge from any and all obligations in respect of such Debt Securities then outstanding (including, in the case of Subordinated Debt Securities, the provisions described under "--- Subordination of Subordinated Debt Securities") and except for certain obligations to register the transfer of or exchange of such Debt Securities, replace stolen, lost or mutilated Debt Securities, maintain paying agencies and hold monies for payment in trust ("defeasance"), upon satisfaction of certain conditions. The Company may elect such satisfaction and discharge when (i) no Event of Default has occurred and is continuing, or would occur upon the giving of notice or lapse of time at the time of such satisfaction and discharge and (ii) the Company deposits, in trust, with the Trustee under the Applicable Indenture money or Government Obligations, which through the payment of interest thereon and principal thereof in accordance with their terms will provide money, in an amount sufficient, without reinvestment, to pay all the principal of (and premium, if any) and interest on, and Additional Amounts with respect to, such Debt Securities on the dates such payments are due and payable, or fulfills such obligations by such other means of satisfaction and discharge as provided in the Applicable Indenture; (iii) the Company has paid or caused to be paid all other sums payable with respect to the Outstanding Securities of such series; (iv) the Company shall have delivered an Opinion of Counsel to the effect that the Holders shall have no Federal income tax consequences as a result of such deposit or defeasance; and (v) the Company has delivered a certificate of its Independent Public Accountants as required by the Applicable Indenture. (Section 402 of each Indenture).

If the Company exercises its defeasance option, payment of such Debt Securities may not be accelerated because of an Event of Default. (Section 402 of each Indenture).

#### Outstanding Debt Securities

In determining whether the Holders of the requisite principal amount of Outstanding Debt Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture, (i) the portion of the principal amount of an Original Issue Discount Security that shall be deemed to be outstanding for such purposes shall be that portion of the principal amount thereof that would be declared to be due and payable pursuant to the terms of such Original Issue Discount Security as of the date of such determination, (ii) the principal amount of any Indexed Security shall be the principal face amount of such Indexed Security determined on the date of its original issuance, (iii) the principal amount of a Debt Security denominated in one or more foreign currency units shall be the U.S. dollar equivalent based on the applicable exchange rate or rates at the time of sale, and (iv) any Debt Security owned by the Company or any obligor on such Debt Security or any affiliate of the Company or such other obligor, shall be deemed not to be outstanding (Section 101 of each Indenture).

Modifications and amendments of each of the Indentures may be made by the Company and the Trustee under the Applicable Indenture for any purpose with the consent of the Holders of not less than 66-2/3% in aggregate principal amount of the Outstanding Debt Securities of each series issued under such indenture and affected by the modification or amendments; provided, however, that no such modification or amendment may, without the consent of the Holders of all Outstanding Debt Securities affected thereby, (i) change the Stated Maturity of the principal of, or any premium or installment of principal of or interest on, any Debt Security; (ii) reduce the principal amount of, or the premium, if any, or (except as otherwise provided in the Applicable Prospectus Supplement) interest on, any Debt Security (including in the case of an Original Issue Discount Debt Security the amount payable upon acceleration of the maturity thereof or the amount provable in bankruptcy); (iii) change the place or currency of payment of principal of, premium, if any, or interest on any Debt Security, (iv) impair the right to institute suit for the enforcement of any payment on any Debt Security on or at the Stated Maturity thereof (or in the case of redemption, on or after the Redemption Date); (v) in the case of the Subordinated Indenture, modify the subordination provisions in a manner adverse to the Holders of the Subordinated Debt Securities; (vi) reduce the percentage in principal amount of Outstanding Debt Securities of any series; or (vii) in the case of Convertible Debt Securities, adversely affect the right to convert such Debt Securities. (Section 902 of each Indenture).

The Holders of at least a majority in aggregate principal amount of the Outstanding Debt Securities of each series may, on behalf of all Holders of that series, waive insofar as that series is concerned, compliance by the Company with certain restrictive provisions of the Applicable Indenture, including the provisions in "--- Certain Covenants" herein. (Section 1008 of each Indenture). The Holders of not less than a majority in aggregate principal amount of the Outstanding Debt Securities may, on behalf of all Holders of the Debt Securities of that series, waive any past default under the Applicable Indenture with respect to Debt Securities of that series, except a default in the payment of principal, premium or interest or in the performance of certain covenants. (Section 513 of each Indenture).

Modification and amendment of each of the Indentures may be made by the Company and the applicable Trustee without the consent of any Holder for any of the following purposes: (i) to evidence the succession of another Person to the Company; (ii) to add to the covenants of the Company for the benefit of the Holders of all of any series of Debt Securities; (iii) to add Events of Default; (iv) to add or change any provisions of the Indenture to facilitate the issuance of bearer Debt Securities; (v) to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Debt Securities; (vi) to establish the form or terms of Debt Securities of any series and any related coupons; (vii) to evidence and provide for the acceptance of appointment by a successor Trustee; (viii) to cure any ambiguity, defect or inconsistency in the Indenture, provided such action does not adversely affect the interests of Holders of Debt Securities of any series or any related coupons in any material respect; (ix) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Debt Securities, provided such action does not adversely affect the interests of Holders of Debt Securities of such series or related coupons in any material respect; (x) to secure the Debt Securities; and (xi) to amend or supplement any provision contained in the Indenture or in any supplemental indenture, provided that such amendment or supplement does not materially adversely affect the interests of the Holders of any Debt Securities then outstanding (Section 901 of each Indenture).

#### Consolidation, Merger and Sale of Assets

The Company may consolidate with or merge into any other Person or Persons or convey, transfer or lease its properties and assets substantially as an entirety to any Person without the consent of the Holders of any of the Outstanding Debt Securities provided that (i) any successor or purchaser is a corporation organized under the laws of the United States of America, any State or the District of Columbia, and any such successor or purchaser expressly assumes the Company's obligations on the Debt

Securities under each of the Indentures, (ii) immediately after giving effect to the transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and (iii) the Company has delivered to the Trustee under the Applicable Indenture an Officers' Certificate and an Opinion of Counsel stating compliance with these provisions. (Section 801)

Concerning the Trustees

[ ] and [ ] are Trustees under the Senior Indenture and the Subordinated Indenture, respectively. In the normal course of business, the Company and its subsidiaries conduct banking transactions with the Trustees, and the Trustees conduct banking transactions with the Company and its subsidiaries.

#### DESCRIPTION OF PREFERRED STOCK

The following summary contains a description of the general terms of the Preferred Stock to which any Prospectus Supplement may relate. Certain terms of any series of the Preferred Stock offered by any Prospectus Supplement will be described in the Prospectus Supplement relating to such series of the Preferred Stock. If so indicated in the Prospectus Supplement, the terms of any such series, including any Depositary Shares (as defined below) issued in respect thereof, may differ from the terms set forth below. The description of certain provisions of the Preferred Stock set forth below and in any Prospectus Supplement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Company's Restated Certificate of Incorporation and the certificates supplementary to the Company's Restated Certificate of Incorporation which will be filed with the Commission in connection with the offering of such series of Preferred Stock.

#### General

Under the Company's Restated Certificate of Incorporation, the Board of Directors of the Company is authorized, without further stockholder action, to provide for the issuance of shares of Preferred Stock, par value \$.01 per share, in one or more series, with such terms, including preferences, conversion and other rights, voting power, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption, as shall be established in or pursuant to the resolution or resolutions providing for the issue thereof to be adopted by the Board of Directors. Currently, under the Company's Restated Certificate of Incorporation, 50,000,000 shares are classified as Preferred Stock. The Company has designated 1,000,000 shares of such Preferred Stock as Cumulative Participating Junior Preferred Stock, which may be issued upon the exercise and conversion of certain Rights attached to each share of the Company's common stock. See "Description of Common Stock -- Rights to Purchase Certain Preferred Shares" herein. Prior to the issuance of each series of Preferred Stock, the Board of Directors (as used herein the term "Board of Directors" includes any duly authorized committee thereof) will adopt resolutions creating and designating such series to a series of Preferred Stock. The description of certain provisions of the Preferred Stock set forth below and in any Prospectus Supplements does not purport to be complete and is subject to and qualified in its entirety by reference to the Certificate of Designation of the Company relating to the particular series of Preferred Stock, which will be filed with the Commission at or prior to the time of sale of such Preferred Stock. As of the date of this Prospectus, no shares of Preferred Stock are outstanding.

The Preferred Stock shall have the dividend, liquidation, and voting rights set forth below, unless otherwise provided in the Prospectus Supplement relating to a particular series of the Preferred Stock. Reference is made to the Prospectus Supplement relating to the particular series of the Preferred Stock offered thereby for specific terms, including: (i) the designation of such Preferred Stock and the number of shares offered; (ii) the amount of liquidation preference per share; (iii) the price at which such Preferred Stock will be issued; (iv) the dividend rate (or method of calculation), the dates on which dividends shall be payable, whether such dividends shall be cumulative or noncumulative, and, if cumulative, the dates

from which dividends shall commence to cumulate; (v) any redemption or sinking fund provisions of such Preferred Stock; (vi) whether the Company has elected to offer Depositary Shares (as defined below); (vii) the terms and conditions, if applicable, upon which such Preferred Stock will be convertible into Common Stock or other Securities, including the conversion price (or manner of calculation thereof); and (viii) any additional voting, dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions of such Preferred Stock.

The Preferred Stock will, when issued, be fully paid and nonassessable and have no preemptive rights. Unless otherwise specified in the Prospectus Supplement relating to a particular series of the Preferred Stock, each series of the Preferred Stock will rank on parity as to dividends and liquidation rights in all respects with each other series of the Preferred Stock.

#### Dividend Rights

Holders of the Preferred Stock of each series will be entitled to receive, when, as and if declared by the Board of Directors of the Company, out of funds of the Company legally available therefor, cash dividends at such rates and on such dates as are set forth in the Prospectus Supplement relating to such series of the Preferred Stock. Such rates may be fixed or variable or both. Each such dividend will be payable to the holders of record as they appear on the stock record books of the Company (or, if applicable, the records of the Depositary referred to below under "Depositary Shares") on such record dates as will be fixed by the Board of Directors of the Company or a duly authorized committee thereof. Dividends on any series of the Preferred Stock may be cumulative or noncumulative, as provided in the Prospectus Supplement relating thereto. The ability of the Company to pay dividends with respect to its Preferred Stock or other capital stock may be affected by the ability of the Bank to pay dividends. The ability of the Bank, as well as the Company, to pay dividends in the future is, and could be further influenced by bank regulatory requirements and capital guidelines and policies established by the Federal Reserve Board. See "Supervision, Regulation and Other Matters" herein.

No full dividends may be declared or paid or funds set apart for the payment of dividends on any securities which rank on parity with the Preferred Stock unless dividends shall have been paid or set apart for such payment on the Preferred Stock. If full dividends are not so paid, the Preferred Stock shall share dividends pro rata with such Securities.

Each series of Preferred Stock will be entitled to dividends as described in the Prospectus Supplement relating to such series, which may be based upon one or more methods of determination. Different series of the Preferred Stock may be entitled to dividends at different rates or based upon different methods of determination.

#### Voting Rights

Except as indicated in the Prospectus Supplement relating to a particular series of Preferred Stock, or except as expressly required by applicable law, the holders of the Preferred Stock will not be entitled to any voting rights.

#### Rights Upon Liquidation

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of each series of Preferred Stock will be entitled to receive out of assets of the Company available for distribution to stockholders, after distribution of assets is made to holders of any series or class of capital stock as may be set forth in the related Prospectus Supplement, liquidating distributions in the amount set forth in the Prospectus Supplement relating to such series of the Preferred Stock plus an amount equal to accrued and unpaid dividends for the then-current dividend period and, if such series of the Preferred Stock is cumulative, for all dividend periods prior thereto, all as set forth in the Prospectus Supplement with respect to such shares. If upon any voluntary or involuntary liquidation,

dissolution or winding up of the Company, the amounts payable with respect to the holders of Preferred Stock of any series are not paid in full, the holders of the Preferred Stock of such series will share ratably in any such distribution of assets of the Company in proportion to the full liquidation preferences to which each is entitled. After payment of the full amount of the liquidation preference to which they are entitled, the holders of such series of Preferred Stock will not be entitled to any further participation in any distribution of assets of the Company.

Because the Company is a holding company, its rights, the rights of its creditors and of its stockholders, including the holders of the shares of the Preferred Stock offered hereby, to participate in the assets of any Subsidiary, including the Bank, upon the latter's liquidation of recapitalization may be subject to the prior claims of the Subsidiary's creditors, except to the extent that the Company may itself be a creditor with reorganized claims against the Subsidiary.

#### Redemption

A series of the Preferred Stock may be redeemable, in whole or in part, at the option of the Company or the holder thereof, and may be subject to mandatory redemption pursuant to a sinking fund, in each case upon terms, at the times and at the redemption prices set forth in the Prospectus Supplement relating to such series.

In the event of partial redemptions of Preferred Stock, whether by mandatory or optional redemption, the shares to be redeemed will be determined by lot or pro rata, as may be determined by the Board of Directors of the Company, a committee thereof or by any other method determined to be equitable by the Board of Directors.

On or after a redemption date, unless the Company defaults in the payment of the redemption price, dividends will cease to accrue on shares of Preferred Stock called for redemption and all rights of Holders of such shares will terminate except for the right to receive the redemption price.

#### Conversion

The Prospectus Supplement for any series of the Preferred Stock will state the terms and conditions, if any, on which shares of that series are convertible into Common Stock or other Securities of the Company. Such terms will include the number of shares of Common Stock or the number of shares or aggregate amount of other Securities into which the shares of Preferred Stock are convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders of the Preferred Stock or the Company, if applicable, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such series of Preferred Stock.

#### Depository Shares

The Company may, at its sole option, elect to offer receipts for fractional interests ("Depository Shares") in Preferred Stock, rather than full shares of Preferred Stock. In such event, receipts ("Depository Receipts") for Depository Shares, each of which will represent a fraction (to be set forth in the Prospectus Supplement relating to a particular series of Preferred Stock) of a share of a particular series of Preferred Stock, will be issued as described below.

The shares of any series of Preferred Stock represented by Depository Shares will be deposited under a Deposit Agreement (the "Depository Agreement") between the Company and the depositary named in the Prospectus Supplement (the "Depository"). Subject to the terms of the Deposit Agreement, each owner of a Depository Share will be entitled, in proportion to the applicable fraction of a share of Preferred Stock represented thereby (including dividend, voting, redemption, subscription and liquidation rights). The above summary of the Deposit Shares does not purport to be complete and is subject to, and is



qualified in its entirety by reference to, the description in the applicable Prospectus Supplement and all the provisions of the Deposit Agreement (which contain the form of Depositary Receipt), which will be filed as an exhibit to the Registration Statement of which this Prospectus is a part.

#### DESCRIPTION OF COMMON STOCK

The Company is authorized to issue 300,000,000 shares of Common Stock, par value \$.01 per share, of which 66,249,466 were issued and outstanding at June 30, 1996. The Common Stock is traded on the New York Stock Exchange under the symbol "COF". All outstanding shares of Common Stock are, and any shares of Common Stock offered, will be validly issued, fully paid and nonassessable.

#### Voting and Other Rights

Holders of Common Stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and except as described below, a majority vote is required for all action to be taken by stockholders. Directors are elected by a plurality of the votes cast, and stockholders do not have cumulative voting rights in the election of directors. Shares of Common Stock do not have any preemptive, subscription, redemption, sinking fund or conversion rights.

#### Distributions

Subject to preferences that may be applicable to holders of any outstanding shares of Preferred Stock, holders of Common Stock are entitled to such dividends as may be declared by the Board of Directors out of funds legally available therefor. Upon liquidation, dissolution or winding-up of the Company, the assets legally available for distribution to stockholders are distributable ratably among the holders of Common Stock at that time outstanding, subject to prior distribution rights of creditors of the Company and to the preferential rights of any outstanding shares of Preferred Stock.

#### ANTITAKEOVER LEGISLATION

Section 203 of the General Corporation Law of the State of Delaware (the "Delaware Law") provides that, subject to certain exceptions specified therein, a corporation shall not engage in any business combination with any "interested stockholder" for a three-year period following the time that such stockholder becomes an interested stockholder unless (i) prior to such time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding certain shares); or (iii) at or subsequent to such time, the business combination is approved by the board of directors of the corporation and by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder. Except as otherwise specified in Section 203 of the Delaware Law, an interested stockholder is defined to include (x) any person that is the owner of 15% or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation, at any time within three years immediately prior to the relevant date and (y) the affiliates and associates of any such person.

Under certain circumstances, Section 203 of the Delaware Law makes it more difficult for a person who would be an "interested stockholder" to effect various business combinations with a corporation for a three-year period, although the stockholders may elect to exclude a corporation from the restrictions imposed thereunder. Neither the Restated Certificate of Incorporation nor the By-laws of the Company exclude the Company from the restrictions imposed under Section 203 of the Delaware Law. It is anticipated that the provisions of Section 203 of the Delaware Law may encourage companies interested in acquiring the Company to negotiate in advance with the Board of Directors, since the stockholder approval requirement would be avoided if a majority of the directors then in office approves either the

business combination or the transaction which results in the stockholder becoming an interested stockholder.

#### Certificate of Incorporation and By-Law Provisions

Certain of the provisions of the Restated Certificate of Incorporation and By-laws discussed below may have the effect, either alone or in combination with the provisions of Section 203 discussed above, the Rights discussed below, and certain banking laws and regulations (see "Regulation -- Investment in the Company"), of making more difficult or discouraging a tender offer, proxy contest or other takeover attempt that is opposed by the Board of Directors but that a stockholder might consider to be in such stockholder's best interest. Those provisions include (i) restrictions on the rights of stockholders to remove directors, (ii) prohibitions against stockholders calling a special meeting of stockholders or acting by unanimous written consent in lieu of a meeting, (iii) a "fair price" provision for business combinations and (iv) requirements for advance notice of actions proposed by stockholders for consideration at meetings of the stockholders.

The summary set forth below describes certain provisions of the Restated Certificate of Incorporation and By-laws and is qualified in its entirety by reference to the provisions of the Restated Certificate of Incorporation and By-laws, copies of which have been filed as exhibits to the Registration Statement of which this Prospectus forms a part.

**CLASSIFIED BOARD OF DIRECTORS.** The Restated Certificate of Incorporation and By-laws of the Company provide that the Board of Directors, other than those elected by any series of Preferred Stock, will be divided into three classes of directors, with the classes to be as nearly equal in number as possible. The term of office of the first and second class of directors expired at the 1995 and 1996 annual meeting of stockholders, respectively, and an election of directors was held at each such annual meeting. The term office of the third class of directors expires at the 1997 annual meeting of stockholders. The class of directors elected at each annual meeting are elected for a term expiring at the annual meeting of stockholders held in the third year following their election and until their successors are elected and qualified.

The classification of directors will have the effect of making it more difficult for stockholders to change the composition of the Board of Directors. At least two annual meetings of stockholders, instead of one, will generally be required to effect a change in a majority of the Board of Directors. Such a delay may held ensure that Company's directors, if confronted by a holder attempting to force a proxy contest, a tender or exchange offer, or an extraordinary corporate transaction, would have sufficient time to review the proposal as well as any available alternatives to the proposal and to act in what they believe to be the best interest of the stockholders. The classification provisions will apply to every election of directors, however, regardless of whether a change in the composition of the Board of Directors would be beneficial to the Company and its stockholders and whether or not a majority of the Company's stockholders believe that such a change would be desirable.

The classification provisions could also have the effect of discouraging a third party from initiating a proxy contest, making a tender offer or otherwise attempting to obtain control of the Company, even though such an attempt might be beneficial to the Company and its stockholders. The classification of the Board of Directors could thus increase the likelihood that incumbent directors will retain their positions. In addition, because the classification provisions may discourage accumulations of large blocks of the Company's stock by purchasers whose objective is to take control of the Company and remove a majority of the Board of Directors, the classification of the Board could tend to reduce the likelihood of fluctuations in the market price of the Common Stock that might result from accumulations of large blocks. Accordingly, stockholders could be deprived of certain opportunities to sell their shares of Common Stock at a higher market price than might otherwise be the case.

NUMBER OF DIRECTORS; REMOVAL; FILLING VACANCIES. The Restated Certificate of Incorporation provides that, subject to any rights of holders of Preferred Stock to elect additional directors under specified circumstances, the number of directors will be fixed in the manner provided in the By-laws. The By-laws provide that, subject to any rights of holders of Preferred Stock to elect directors under specified circumstances, the number of directors will be fixed from time to time exclusively pursuant to a resolution adopted by directors constituting a majority of the total number of directors that the Company would have if there were no vacancies on the Board of Directors (the "Whole Board"), but must consist of not more than seventeen nor less than three directors. In addition, the By-laws provide that, subject to any rights of holders of Preferred Stock, and unless the Board of Directors otherwise determines, any vacancies will be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum. Accordingly, absent an amendment to the By-laws, the Board of Directors could prevent any stockholder from enlarging the Board of Directors and filling the new directorships with such stockholder's own nominees.

In order to be qualified to serve as a director, a person must (a) not have attained the age of seventy years and (b) either (i) be an officer or employee of the Company and not (A) have voluntarily resigned from the position or office he held at the time of his election as a director, (B) have retired or been retired pursuant to the requirements of a pension, profit sharing, or similar plan or (C) have, at the time of his election as a director, held a position or office in the Company which has been changed, other than by an upward or expanded promotion or (ii) in the case of any person who is not an officer or employee of the Company, not (A) have retired from or severed his connection with the organization with which he was affiliated at the time of his election as a director or (B) have held a position or office with an organization with which he was affiliated at the time of his election as a director which has been changed, other than by an upward or expanded promotion, and (C) not have a material conflict of interest with the Company (1) as defined by applicable laws and regulations and (2) the existence and materiality of which may be determined by a majority of the remaining directors. Whenever any director shall cease to be qualified to serve as a director his term shall expire, but such director shall continue to serve until his successor is elected and qualified; provided, however, that no director's term shall so expire if the Board of Directors shall have waived such qualification.

Under the Delaware Law, unless otherwise provided in the certificate of incorporation, directors serving on a classified board may only be removed by the stockholders for cause. The Restated Certificate of Incorporation and By-laws of the Company provide that, subject to the rights of holders of Preferred Stock to elect directors under specified circumstances, directors may be removed only for cause and only upon the affirmative vote of holders of at least 80% of the voting power of all the then outstanding shares of stock entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class.

NO STOCKHOLDER ACTION BY WRITTEN CONSENT; SPECIAL MEETINGS. The Restated Certificate of Incorporation and By-laws of the Company provide that, subject to the rights of any holders of Preferred Stock to elect additional directors under specified circumstances, stockholder action can be taken only at an annual or special meeting of stockholders and prohibit stockholder action by written consent in lieu of a meeting. The By-laws provide that, subject to the rights of holders of any series of Preferred Stock to elect additional directors under specified circumstances, special meetings of stockholders can be called only by the Chairman of the Board of Directors or by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. Stockholders are not permitted to call a special meeting or to require that the Board of Directors call a special meeting of stockholders. Moreover, the business permitted to be conducted at any special meeting of stockholders is limited to the business brought before the meeting pursuant to the notice of meeting given by the Company.

The provisions of the Restated Certificate of Incorporation and By-laws of the Company prohibiting stockholder action by written consent may have the effect of delaying consideration of a stockholder proposal until the next annual meeting unless a special meeting is called by the Chairman or at the request of a majority of the Whole Board. The provisions would also prevent the holders of a majority

of the voting power of the Voting Stock from unilaterally using the written consent procedure to take stockholder action and from taking action by consent. Moreover, a stockholder could not force stockholder consideration of a proposal over the opposition of the Chairman and the Board of Directors by calling a special meeting of stockholders prior to the time the Chairman or a majority of the Whole Board believes such consideration to be appropriate.

**ADVANCE NOTICE PROVISIONS FOR STOCKHOLDER NOMINATIONS AND STOCKHOLDER PROPOSALS.** The By-laws establish an advance notice procedure for stockholders to make nominations of candidates for election as directors, or bring other business before an annual meeting of stockholders of the Company (the "Stockholder Notice Procedure").

The Stockholder Notice Procedure provides that only persons who are nominated by, or at the direction of, the Board of Directors, or by a stockholder who has given timely written notice to the Secretary of the Company prior to the meeting at which directors are to be elected, will be eligible for election as directors of the Company. The Stockholder Notice Procedure provides that at an annual meeting only such business may be conducted as has been brought before the meeting by, or at the direction of, the Chairman or the Board of Directors or by a stockholder who has given timely written notice to the Secretary of the Company of such stockholder's intention to bring such business before such meeting. Under the Stockholder Notice Procedure, for notice of stockholder nominations or proposals to be made at an annual meeting to be timely, such notice must be received by the Company not less than 70 days nor more than 90 days prior to the first anniversary of the previous year's annual meeting (or in the event that the date of the annual meeting is advanced by more than 30 days, or delayed by more than 70 days, from such anniversary date, not earlier than the 90th day prior to such meeting and not later than the later of (x) the 70th day prior to such meeting and (y) the 10th day after public announcement of the date of such meeting is first made). Notwithstanding the foregoing, in the event that the number of directors to be elected is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Company at least 80 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice will be timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Company not later than the 10th day after such public announcement is first made by the Company. Under the Stockholder Notice Procedure, for notice of a stockholder nomination to be made at a special meeting at which directors are to be elected to be timely, such notice must be received by the Company not earlier than the 90th day before such meeting and not later than the later of (x) the 70th day prior to such meeting and (y) the 10th day after public announcement of the date of such meeting is first made.

Under the Stockholder Notice Procedure, a stockholder's notice to the Company proposing to nominate a person for election as a director must contain certain information, including, without limitation, the identity and address of the nominating stockholder, the class and number of shares of stock of the Company which are owned by such stockholder, and all information regarding the proposed nominee that would be required to be included in a proxy statement soliciting proxies for the proposed nominee. Under the Stockholder Notice Procedure, a stockholder's notice relating to the conduct of business other than the nomination of directors must contain certain information about such business and about the proposing stockholder, including, without limitation, a brief description of the business the stockholder proposes to bring before the meeting, the reasons for conducting such business at such meeting, the name and address of such stockholder, the class and number of shares of stock of the Company beneficially owned by such stockholder, and any material interest of such stockholder in the business so proposed. If the Chairman of the Board or other officer presiding at a meeting determines that a person was not nominated, or other business was not brought before the meeting, in accordance with the Stockholder Notice Procedure, such person will not be eligible for election as a director, or such business will not be conducted at such meeting, as the case may be.

By requiring advance notice of nominations by stockholders, the Stockholder Notice Procedure will afford the Board of Directors an opportunity to consider the qualifications of the proposed nominees and, to the extent deemed necessary or desirable by the Board of Directors, to inform stockholders about

such qualifications. By requiring advance notice of the proposed business, the Stockholder Notice Procedure will also provide a more orderly procedure for conducting annual meetings of stockholders and, to the extent deemed necessary or desirable by the Board of Directors, will provide the Board of Directors with an opportunity to inform stockholders, prior to such meetings, if any business proposed to be conducted at such meetings, together with any recommendations as to the Board's position regarding action to be taken with respect to such business, so that stockholders can better decide whether to attend such a meeting or to grant a proxy regarding the disposition of any such business.

Although the By-laws do not give the Board of Directors any power to approve or disapprove stockholder nominations for the election of directors or proposals for action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal, without regard to whether consideration of such nominees or proposals might be harmful or beneficial to the Company and its stockholders.

**BUSINESS COMBINATIONS.** The Restated Certificate of Incorporation requires certain Business Combinations (as defined therein) with Interested Stockholders (as defined below) or affiliates thereof be approved by the affirmative vote of the holders of at least 75% of the Voting Stock of the Company, voting together as a single class. Such affirmative vote is required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise. The requirement that a Business Combination with an Interested Stockholder be approved by the affirmative vote of 75% of the voting power of the outstanding Voting Stock does not apply if either (i) the Business Combination has been approved by a majority of the Continuing Directors (as defined below), or (ii) certain price and procedure requirements designated to ensure that the Company's stockholders receive a "fair price" for their Common Stock are satisfied. An "Interested Stockholder" is any person (other than the Company or any subsidiary of the Company) who or which: (i) is the beneficial owner, directly or indirectly, of 5% or more of the voting power of the outstanding Voting Stock; or (ii) is an affiliate of the Company and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 5% or more of the voting power of the then outstanding Voting Stock; or (iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act. A "Continuing Director" means any member of the Board of Directors who was unaffiliated with the Interested Stockholder and was a member of the Board of Directors prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor director who is unaffiliated with the Interested Stockholder and is recommended or elected to succeed a Continuing Director by a majority of Continuing Directors then on the Board of Directors.

**LIABILITY OF DIRECTORS; INDEMNIFICATION.** The Restated Certificate of Incorporation provides that a director will not be personally liable for monetary damages to the Company or its stockholders for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for paying a dividend or approving a stock repurchase in violation of Section 174 of the Delaware Law or (iv) for any transaction from which the director derived an improper personal benefit. The Restated Certificate of Incorporation also provides that each person who is or was or had agreed to become a director or officer of the Company, or each such person who is or was serving or had agreed to serve at the request of the Board of Directors of the Company as an employee or agent of the Company or as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including the heirs, executors, administrators or estate of such person), will be indemnified by the Company, in accordance with the By-laws, to the full extent permitted by the Delaware Law, as the same exists or may in the future be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader

indemnification rights than said law permitted the Company to provide prior to such amendment) . The Restated Certificate of Incorporation also specifically authorizes the Company to enter into agreements with any person providing for indemnification greater or different than that provided by the Certificate of Incorporation.

AMENDMENTS. The Restated Certificate of Incorporation and By-laws state that any amendment to certain provisions, including those provisions discussed above, be approved by the holders of at least 80% of the Voting Stock. This requirement will prevent a stockholder with only a majority of the Common Stock from avoiding the requirements of the provisions discussed above by simply repealing such provisions. The Restated Certificate of Incorporation further provides that the By-laws may be amended by the Company's Board of Directors.

#### Rights to Purchase Certain Preferred Shares

Each share of Common Stock issued and outstanding, or to be issued and outstanding, includes, or upon issuance will include, an attached "Right." Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of the Company's Cumulative Participating Junior Preferred Stock, par value \$0.01 per share (the "Junior Preferred Shares") at a price of \$150 per one one-hundredth of a share (the "Purchase Price"), subject to adjustment. The Company has initially authorized and reserved 1,000,000 shares of Junior Preferred Shares for issuance upon exercise of the Rights. Because of the nature of the Junior Preferred Shares' dividend and liquidation rights, the value of the one one-hundredth interest in a Junior Preferred Share purchasable upon exercise of each Right should approximate the value of one share of Common Stock. Initially, the Rights are not exercisable and trade automatically with the Common Stock. The Rights generally become exercisable, however, and separate certificates representing the Rights will be distributed, if any person or group acquires 15 percent or more of the Company's outstanding Common Stock or a tender offer or exchange offer is announced for the Company's Common Stock. The Rights expire on November 29, 2005, unless earlier redeemed by the Company at \$0.01 per Right prior to the time any person or group acquires 15 percent of the outstanding Common Stock. Until the Rights become exercisable, the Rights have no dilutive effective on earnings per share. Prior to exercise, a Right will not create any rights in the holder thereof as a stockholder of the Company, including, without limitation, the right to vote or receive dividends.

The Rights will have certain antitakeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Board of Directors, except pursuant to an offer conditioned on a substantial number of Rights being acquired. The Rights should not interfere with any merger or other business combination approved by the Board of Directors, since the Rights may be redeemed by the Company for \$0.01 per Right prior to the time that a person or group acquires 15 percent of the outstanding Common Stock.

The foregoing summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Form 8-A of the Company filed on November 16, 1995, which is incorporated herein by reference, and the Certificate of Designations, a copy of which has been filed as an exhibit to the Registration Statement of which this Prospectus forms a part.

#### Dividend Reinvestment Plan

In January 1996, the Company implemented a dividend reinvestment and stock purchase plan (the "DRIP"). The DRIP provides stockholders with the opportunity to purchase additional shares of the Company's Common Stock by reinvesting all or a portion of their dividends on shares of Common Stock. The DRIP also provides existing stockholders with the option to make cash investments monthly (subject to a minimum monthly limit of \$50 and a maximum monthly limit of \$5,000). Optional cash investments in excess of \$5,000 may be made with the permission of the Company at a discount which will be from 0% to 3%. The Company uses proceeds from the DRIP for general corporate purposes.

## Transfer Agent

The transfer agent and registrar for the Common Stock is ChaseMellon Shareholder Services, L.L.C.

## PLAN OF DISTRIBUTION

The Company may sell Securities to or through underwriters or dealers, and also may sell Securities directly to other purchasers or through agents. Each Prospectus Supplement will describe the method of distribution of the Securities being offered thereby.

The distribution of the Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

In connection with the sale of Securities, underwriters may receive compensation from the Company or from purchasers of Securities for whom they may act as agents in the form of discounts, concessions or commissions. Underwriters may sell Securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of Securities may be deemed to be underwriters, and any discounts or commissions received by them from the Company and any profit on the resale of Securities by them may be deemed to be underwriting discounts and commissions, under the Securities Act of 1933, as amended (the "Securities Act"). Any such underwriter or agent will be identified, and any such compensation received from the Company will be described, in the Prospectus Supplement.

If so indicated in the Applicable Prospectus Supplement, the Company will authorize underwriters or other persons acting as the Company's agents to solicit offers by certain institutions to purchase Offered Debt Securities from the Company pursuant to contracts providing for payment and delivery on a future date. Institutions with which such contracts may be made include but are not limited to commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others, but in all cases such institutions must be approved by the Company. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the Offered Debt Securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which such purchaser is subject. The underwriters and such other agents will not have any responsibility in respect to the validity or performance of such contracts.

Underwriters and agents who participate in the distribution of Securities may be entitled under agreements which may be entered into by the Company to indemnification by the Company against certain liabilities, including liabilities under the Securities Act.

## VALIDITY OF SECURITIES

The validity of the Securities will be passed upon for the Company by John G. Finneran, Jr., Senior Vice President, General Counsel and Corporate Secretary of the Company. Mr. Finneran owns beneficially 40,874 shares of common stock of the Company, including options exercisable within sixty days under the Company's 1994 Stock Incentive Plan.

## EXPERTS

The consolidated financial statements of Capital One Financial Corporation incorporated by reference in Capital One Financial Corporation's Annual Report (Form 10-K) for the year ended December 31, 1995, have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon, incorporated by reference therein and incorporated herein by reference. Such consolidated

financial statements are incorporated herein by reference in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.



## PART II

## INFORMATION NOT REQUIRED IN THE PROSPECTUS

## Item 14. Other Expenses of Insurance and Distribution.

The Company estimates that expenses, other than underwriting compensation, in connection with the offering described in this Registration Statement will be as follows:

Registration fee . . . . .	\$ 68,965
Trustee's fees and expenses . . . . .	15,000
Printing and engraving expenses . . . . .	75,000
Legal fees and expenses . . . . .	30,000
Accountants' fees and expenses . . . . .	30,000
Rating agency fees . . . . .	75,000
Blue Sky fees and expenses . . . . .	15,000
NASD Filing Fees . . . . .	20,500
NYSE Filing Fees . . . . .	15,000
Miscellaneous . . . . .	5,535
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Total . . . . .	\$350,000
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## Item 15. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware provides, in general, for indemnification by a corporation of any person threatened with or made a party to any action, suit or proceeding by reason of the fact that he or she is, or was, a director, officer, employee or agent of such corporation. Indemnification is also authorized with respect to a criminal action or proceeding where the person had no reasonable cause to believe that his conduct was unlawful.

Article XI of the Company's Restated Certificate of Incorporation and Section 6.7 of the Company's Restated bylaws provides, in general, for mandatory indemnification of directors and officers to the extent permitted by law, against liability incurred by them in proceedings instituted or threatened against them by third parties, or by or on behalf of the Company itself, relating to the manner in which they performed their duties unless they have been guilty of willful misconduct or of a knowing violation of the criminal law.

## Item 16. Exhibits.

- 1.1 -- Form of Debt Underwriting Agreement\*\*
- 1.2 -- Form of Preferred Stock Purchase Agreement\*\*
- 3.1 -- Restated Certificate of Incorporation of Capital One Financial Corporation\*
- 3.2 -- Restated Bylaws of Capital One Financial Corporation (as amended January 24, 1995)\*
- 4.1 -- Revised Form of Senior Indenture, dated as of [\_\_\_\_\_], between the Company and [\_\_\_\_\_], as trustee\*
- 4.2 -- Revised Form of Subordinated Indenture, dated as of [\_\_\_\_\_], between the Company and [\_\_\_\_\_], as trustee\*
- 4.3 -- Certificate of Designations of Cumulative Participating Junior Preferred Stock\*
- 4.4 -- Form of Certificate of Designations relating to each series of Preferred Stock\*\*
- 4.5 -- Form of Deposit Agreement\*\*

- 5 -- Opinion of John G. Finneran, Jr., Senior Vice President, General Counsel and Corporate Secretary of Company\*
- 12 -- Statement re: Computation of Ratios of Earnings to Fixed Charges\*
- 13 -- Portions of the Company's 1995 Annual Report incorporated by reference into the Company's Form 10-K for the year ended December 31, 1996\*
- 23.1 -- Consent of Ernst & Young LLP\*
- 23.2 -- Consent of John G. Finneran, Jr. (included in Exhibit 5)
- 24 -- Powers of Attorney (set forth on signature page)\*\*\*
- 25.1 -- Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of [\_\_\_\_\_] (separately bound and filed)\*\*
- 25.2 -- Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of [\_\_\_\_\_] (separately bound and filed)\*\*

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\* Filed herewith.

\*\* To be filed by amendment or incorporated by reference. The Company will file as an Exhibit to a Current Report on Form 8-K any related form utilized in the future and not previously filed by means of an amendment.

\*\*\* Previously filed.

#### Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(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 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 and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(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 (1)(i) and (1) (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(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 Section 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) - (g) [Intentionally omitted].

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 15, or otherwise, the registrant has been advised that in the opinion of the Commission 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.

(i) (1) 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 434(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.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the Securities offered therein, and the offering of such Securities at that time shall be deemed to be the initial bona fide offering thereof.

(j) The undersigned Registrants hereby undertake 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 Commission under section 305(b)(2) of the Trust Indenture Act.

#### INDEX TO EXHIBITS

Exhibit Number -----	Exhibits -----	Sequentially Numbered Page -----
1.1	Form of Debt Underwriting Agreement**	
1.2	Form of Preferred Stock Purchase Agreement**	
3.1	Restated Certificate of Incorporation of Capital One Financial Corporation*	
3.2	Restated Bylaws of Capital One Financial Corporation (as amended January 24, 1995)*	
4.1	Revised Form of Senior Indenture, dated as of [____], between the Company and [____], as trustee*	
4.2	Revised Form of Subordinated Indenture, dated as of	

- [\_\_\_\_\_] , between the Company and [\_\_\_\_\_] , as trustee\*
- 4.3 Certificate of Designations of Cumulative Participating Junior Preferred Stock\*
- 4.4 Form of Certificate of Designations relating to each series of Preferred Stock\*\*
- 4.5 Form of Deposit Agreement\*\*
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- 12 Statement re: Computation of Ratios of Earnings to Fixed Charges\*
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\* Filed herewith.

\*\* To be filed by amendment or incorporated by reference. The Company will file as an Exhibit to a Current Report on Form 8-K any related form utilized in the future and not previously filed by means of an amendment.

\*\*\* Previously filed.

## 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 Amendment No. 1 to Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the Commonwealth of Virginia, on the 19th day of September, 1996.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ JAMES M. ZINN

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James M. Zinn  
Senior Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement on Form S-3 has been signed below by the following persons in the capacities and on the 19th day of September, 1996.

## SIGNATURE

## TITLE

/s/ Richard D. Fairbank\*

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Richard D. FairbankDirector, Chairman and Chief Executive Officer  
(Principal Executive Officer)

/s/ Nigel W. Morris\*

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Nigel W. Morris

Director, President and Chief Operating Officer

/s/ James M. Zinn

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James M. ZinnSenior Vice President and Chief Financial Officer  
(Principal Accounting and Financial Officer)

/s/ W. Ronald Dietz\*

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W. Ronald Dietz

Director

/s/ James A. Flick, Jr.\*

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James A. Flick, Jr.

Director

/s/ Patrick W. Gross\*

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Patrick W. Gross

Director

/s/ James V. Kimsey\*

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James V. Kimsey

Director

/s/ Stanley I. Westreich\*

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Stanley I. Westreich

Director

\* By: /s/ James M. Zinn

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James M. Zinn  
Attorney-in-Fact

## RESTATED CERTIFICATE OF INCORPORATION

OF

CAPITAL ONE FINANCIAL CORPORATION

1. The name of the corporation (which is hereafter referred to as the Corporation) is "Capital One Financial Corporation".

2. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on July 21, 1994, under the name BCD Holdings Corporation.

3. This Restate Certificate of Incorporation has been duly proposed by resolutions adopted and declared advisable by the Board of Directors of the Corporation (the "Board of Directors"), and duly executed and acknowledged by the proper officers of the Corporation in accordance with the provisions of Sections 103, 241 and 245 of the General Corporation Law of the State of Delaware (the "GCL") and, upon filing with the Secretary of State in accordance with Section 103 shall henceforth supercede the original Certificate of Incorporation and shall, as it may thereafter be amended in accordance with its terms and applicable law, be the Certificate of Incorporation of the Corporation.

4. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

## ARTICLE 1

The name of the corporation (which is hereinafter referred to as the "Corporation ") is:

Capital One Financial Corporation

## ARTICLE 11

The address of the Corporation's registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is Corporation Service Company.

## ARTICLE III

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under The GCL.

## ARTICLE IV

(A) Authorized Stock. The Corporation shall be authorized to issue 350,000,000 shares of capital stock, of which 300,000,000 shares shall be shares of Common Stock, \$.01 par value ("Common Stock"), and 50,000,000 shall be shares of Preferred Stock, \$.01 per value ("Preferred Stock").

(B) Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to create and provide for the issuance of shares of Preferred Stock in series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as a "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(i) The designation of the series, which may be by distinguishing number, letter or title.

(ii) The number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(iii) Whether dividends, if any, shall be cumulative or noncumulative and dividend rate of the series.

(iv) Dates at which dividends, if any, shall be payable.

(v) The redemption rights and price or prices, if any, for shares of the series.

(vi) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.



(vii) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(viii) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.

(ix) Restrictions on the issuance of shares of the same series or of any other class or series.

(x) The voting rights, if any, of the holders of shares of the series.

(xi) Such other powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof as the Board of Directors shall determine.

(C) Common Stock. The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Each share of Common Stock shall have the right to cast one vote for each share for the election of Directors and on all other matters upon which stockholders are entitled to vote.

(D) Vote. Except as otherwise provided in this Certificate of Incorporation or in a Preferred Stock Designation, or as may be required by applicable law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes and holders of shares of Preferred Stock shall not be entitled to receive notice of any meeting of shareholders at which they are not entitled to vote. Each share of Common Stock shall have one vote, and the Common Stock shall vote together as a single class.

(E) Record Holders. The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

## ARTICLE V

The Board of Directors is hereby authorized to create and issue, whether or not in connection with the issuance and sale of any of its stock or other securities or property, rights entitling the holders thereof to purchase from the Corporation shares of stock or other securities of the Corporation or any other corporation, recognizing that, under certain circumstances, the creation and issuance of such rights could have the effect of discouraging third parties from seeking, or impairing their ability to seek, to acquire a significant portion of the outstanding securities of the Corporation, to engage in any transaction which might result in a change of control of the Corporation or to enter into any agreement, arrangement or understanding with another party to accomplish the foregoing or for the purpose of acquiring, holding, voting or disposing of any securities of the Corporation. The times at which and the terms upon which such rights are to be issued will be determined by the Board of Directors and set forth in the contracts or instruments that evidence such rights. The authority of the Board of Directors with respect to such rights shall include, but not be limited to, determination of the following:

(A) The initial purchase price per share or other unit of the stock or other securities or property to be purchased upon exercise of such rights.

(B) Provisions relating to the times at which and the circumstances under which such rights be exercised or sold or otherwise transferred, either together with or separately from, any other stock or other securities of the Corporation.

(C) Provisions which adjust the number or exercise price of such rights or amount or nature of the stock or other securities or property receivable upon exercise of such rights in the event of a combination, split or recapitalization of any stock of the Corporation, a change in ownership of the Corporation's stock or other securities or a reorganization, merger, consolidation, sale of assets or other occurrence relating to the Corporation or any stock of the Corporation, and provisions restricting the ability of the Corporation to enter into any such transaction absent an assumption by the other party or parties thereto of the obligations of the Corporation under such rights.

(D) Provisions which deny the holder of a specified percentage of the outstanding stock or other securities of the Corporation the right to exercise such rights and/or cause the rights held by such holder to become void.

(E) Provisions which permit the Corporation to redeem or exchange such rights, which redemption or exchange may be within the sole discretion of the Board of Directors, if the Board of Directors reserves such right to itself.

(F) The appointment of a rights agent with respect to such rights.

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least 80 percent of the voting power of the then outstanding Voting Stock (as defined below), voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent, with this Article V. For the purposes of this Certificate of Incorporation, "Voting Stock" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of Directors.

#### ARTICLE VI

(A) In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized and empowered:

(i) to adopt, amend or repeal the Bylaws of the Corporation, provided, however, that the Bylaws adopted by the Board of Directors under the powers hereby conferred may be altered, amended or repealed by the Board of Directors or by the stockholders having voting power with respect thereto, provided further that in the case of amendments by stockholders, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to alter, amend or repeal, the Bylaws; and

(ii) from time to time to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection of stockholders; and, except as so determined, or as expressly provided in this Certificate of Incorporation or in any Preferred Stock Designation, no stockholder shall have any right to inspect any account, book or document of the Corporation other than such rights as may be conferred by law.

(B) The Corporation may in its Bylaws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by law. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, subparagraph (i) of paragraph (A) of this Article VI.

## ARTICLE VII

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances or to consent to specific actions taken by the Corporation, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing in lieu of a meeting of such stockholders. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, this Article VII.

## ARTICLE VIII

(A) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances, the number of directors of the Corporation shall be fixed by the Bylaws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the Bylaws.

(B) Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

(C) The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided into three classes as nearly equal in number as possible, and designated as Class I, Class II and Class III. Class I directors shall be initially elected for a term expiring at the 1995 annual meeting of stockholders, Class II directors shall be initially elected for a term expiring at the 1996 annual meeting of stockholders, and Class III directors shall be initially elected for a term expiring at the 1997 annual meeting of stockholders. Members of each class shall hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected by a plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election, and until their successors are elected and qualified.

(D) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances, any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class.

(E) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80 percent of

the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, this Article VIII.

#### ARTICLE IX

##### Section 1. Vote Required for Certain Business Combinations.

(A) Higher Vote for Certain Business Combinations. In addition to any affirmative vote required by law or this Certificate of Incorporation and except as otherwise expressly provided in Section 2 of this Article IX:

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder, including all Affiliates of the Interested Stockholder, of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of \$10,000,000 or more; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder, including all Affiliates of the Interested Stockholder, in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$10,000,000 or more; or

(iv) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliates of an Interested Stockholder; or

(v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not an Interested Stockholder is a party thereto) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which are directly or indirectly owned by any Interested Stockholder or one or more Affiliates of the Interested Stockholder;

shall require the affirmative vote of the holders of at least 75% of the voting power of the then outstanding Voting Stock, voting together as a single class, including the affirmative vote of the holders of at least 75% of the voting power of the then outstanding Voting Stock not owned directly or indirectly by any Interested Stockholder or any Affiliate of any Interested Stockholder. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be permitted by law or in any agreement with any national securities exchange or otherwise.

(B) Definition of "Business Combination." The term "Business Combination" as used in this Article IX shall mean any transaction described in any one or more of clauses (i) through (v) of paragraph (A) of this Section 1.

Section 2. When Higher Vote is Not Required. The provision of Section 1 of this Article IX shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law or any other provision of this Restated Certificate of Incorporation, if the conditions specified in either of the following paragraphs (A) or (B) are met:

(A) Approval by Continuing Directors. The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined).

(B) Price and Procedure Requirements. All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value as hereinafter defined as of the date of the consummation of the Business Combination of consideration other than cash, to be received per share by holders of Common Stock in such Business Combination, shall be at least equal to the highest of the following:

(a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of such Business Combination (the "Announcement Date"), or (2) in the transaction in which it became an Interested Stockholder, whichever is higher.

(b) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date"), whichever is higher, and

(c) (if applicable) the price per share equal to the Fair Market Value per share of Common Stock determined pursuant to paragraph (B) (i) (b) above, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it within the two-year period immediately prior to the Announcement Date to (2) the Fair Market Value per share of Common Stock on the first day in such two-year period upon which the Interested Stockholder acquired any shares of Common Stock.

(ii) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any other class, other than Common Stock or Excluded Preferred Stock (as hereinafter defined), of outstanding Voting Stock shall be at least equal to the highest of the following (it being intended that the requirements of this paragraph (B) (ii) shall be required to be met with respect to every such class of outstanding Voting Stock whether or not the Interested Stockholder has previously acquired any share of a particular class of Voting Stock):

(a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date, or (2) in the transaction in which it became an Interested Stockholder, whichever is higher.

(b) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(c) the Fair Market per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher, and

(d) (if applicable) the price per share equal to the Fair Market Value per share of such class of Voting Stock determined pursuant to paragraph (b) (ii) (c) above, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it within the two-year period immediately prior

to the Announcement Date to (2) the Fair Market Value per share of such class of Voting Stock on the first date in such two-year period upon which the Interested Stockholder acquired any shares of such class of Voting Stock.

(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock and other than Excluded Preferred Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for which class of Voting Stock shall either be cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on any outstanding preferred stock, except as approved by a majority of the Continuing Directors; (b) there shall have been no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors; (c) there shall have been an increase in the annual rate of dividends is necessary fully to reflect any recapitalization (including any reverse stock split), reorganization or any similar reorganization which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (d) such Interested Stockholder shall not have become the Beneficial Owner of any additional Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirement of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to stockholders of the Corporation at least thirty (30) days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).



## Section 3. Certain Definitions. For purposes of this Article

IX.

(A) "Person" shall mean any individual, firm, corporation or other entity.

(B) "Interested Stockholder" shall mean any Person (other than the Corporation or any Subsidiary) who or which:

(i) itself, or along with its Affiliates, is the Beneficial Owner directly or indirectly, of more than 5% of the then outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was itself, or along with Affiliates, the Beneficial Owner, directly or indirectly, of 5% or more of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any Voting Stock which was at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

provided, however, that Signet Banking Corporation and its Affiliates shall not be deemed an Interested Stockholder as long as they continue to control more than a majority of the outstanding Voting Stock.

(C) "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations of the Securities Exchange Act of 1934, as in effect July 1, 1994. In addition, a Person shall be the "Beneficial Owner" of any Voting Stock which such Person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding (but neither such Person nor any such Affiliate or Associate shall be deemed to be the Beneficial Owner of any shares of Voting Stock solely by reason of a revocable proxy granted for a particular meeting of stockholders, pursuant to a public solicitation of proxies for such meeting, and with respect to which shares neither such Person nor any such Affiliate or Associate is otherwise deemed the Beneficial Owner.).

(D) For the purpose of determining whether a Person is an Interested Stockholder pursuant to paragraph (B) of this Section 3, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application

of paragraph (C) of this Section 3 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding or upon exercise of conversion rights, warrants or options or otherwise.

(E) "Affiliate" and "Associate" shall have the respective meaning ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on July 1, 1994.

(F) "Subsidiary" shall mean any corporation of which a majority of any share of equity security is owned, directly or indirectly, by the Corporation, provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph (B) of this Section 3, the term "Subsidiary" shall mean only a corporation of which a majority of each share of equity security is owned, directly or indirectly, by the Corporation.

(G) "Continuing Director" shall mean any member of the Board of Directors who is unaffiliated with the Interested Stockholder and was a member of the Board of Directors prior to the time that the Interested Stockholder became an Interested Stockholder, and any director who is thereafter chosen to fill any vacancy on the Board of Directors or who is elected and who, in either event, is unaffiliated with the Interested Stockholder and in connection with his or her initial assumption of office is recommended for appointment or election by a majority of Continuing Directors then on the Board.

(H) "Fair Market Value" shall mean (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange listed stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange or, if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 60-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use in its stead, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board of Directors in accordance with Section 4 of this Article IX, and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board of Directors in accordance with Section 4 of this Article IX.

(I) In the event of any Business Combination in which the Corporation survives, the phrase "other consideration to be received" as used in paragraphs (B) (i) and (ii) of Section 2 of this Article IX shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

(J) "Excluded Preferred Stock" means any series of Preferred Stock with respect to which a majority of the Continuing Directors have approved a Preferred Stock Designation creating such series that expressly provides that the provisions of this Article IX shall not apply.

Section 4. The Continuing Directors of the Corporation shall have the power and duty to determine for the purposes of this Article IX on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article IX, including, without limitation, (i) whether a Person is an Interested Stockholder, (ii) the number of shares of Voting Stock beneficially owned by any Person, (iii) whether a Person is an Affiliate or Associate of another, (iv) whether the applicable conditions set forth in paragraph (B) of Section 2 of this Article IX have been met with respect to any Business Combination, (v) the Fair Market Value of stock or other property in accordance with paragraph (H) of Section 3 of this Article IX and (vi) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of Securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$10,000,000 or more.

Section 5. No Effect on Fiduciary Obligations of Interested Stockholders. Nothing contained in this Article IX shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Section 6. Amendment, Repeal, etc. Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be permitted by law, this Certificate of Incorporation or the bylaws of the Corporation), but in addition to any affirmative vote of the holders of any particular class of Voting Stock required by law or this Certificate of Incorporation, the affirmative vote of the holders of 80% of the voting power of the shares of the then outstanding Voting Stock voting together as a single class, including the affirmative vote of the holders of 80% of the voting power of the then outstanding Voting Stock not owned directly or indirectly by an interested Stockholder or any Affiliate of any Interested Stockholder, shall be required to amend or repeal, or adopt any provisions inconsistent with, this Article IX of this Certificate of Incorporation.

#### ARTICLE X

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts of omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the director derived an improper personal benefit.

## ARTICLE XI

Each person who is or was or had agreed to become a director or officer of the Corporation, or each such person who is or was serving or who has agreed to serve at the request of the Board of Directors or an officer of the Corporation as an employee or agent of the Corporation or as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including the heirs, executor, administrators or estate of such person), shall be indemnified by the Corporation, in accordance with the Bylaws of the Corporation, to the fullest extent permitted from time to time by the GCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) or any other applicable laws as presently or hereafter in effect. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided in this Article XI. Any amendment or repeal of this Article XI shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

## ARTICLE XII

Except as may be expressly provided in this Certificate of Incorporation, the Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed herein or by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article XII; provided, however, that any amendment or repeal of Article X or Article XI of this Certificate of Incorporation shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal; and provided further that no Preferred Stock Designation shall be amended after the issuance of any shares of the series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of Applicable law.

IN WITNESS WHEREOF, said Capital One Financial Corporation has caused this Certificate of Incorporation to be signed by its President and attested by its Secretary and has caused its corporate seal to be hereunto affixed, this 9th day of November, 1994.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ NIGEL W. MORRIS  
-----  
Name: Nigel W. Morris  
Title: President and Chief  
Operating Officer

Attest: /s/ ANDREW T. MOORE, JR.  
-----  
Corporate Secretary

RESTATED BYLAWS  
OF  
CAPITAL ONE FINANCIAL CORPORATION

Incorporated under the Laws of the State of Delaware

ARTICLE I

OFFICES AND RECORDS

Section 1.1. Delaware Office. The principal office of Capital One Financial Corporation (the "Corporation") in the State of Delaware shall be located in the City of Wilmington, County of New Castle, and the name and address of its registered agent is Corporation Service Company, 1013 Centre Road, Wilmington, Delaware.

Section 1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may from time to time designate or as the business of the Corporation may from time to time require.

Section 1.3. Books and Records. The books and records of the Corporation may be kept at the Corporation's headquarters in Falls Church, Virginia or at such other locations outside the State of Delaware as may from time to time be designated by the Board of Directors.

ARTICLE II

STOCKHOLDERS

Section 2.1. Annual Meeting. The annual meetings of stockholders of the Corporation shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the registered office of the Corporation on the first Tuesday in May. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

Section 2.2. Special Meeting. Subject to the rights of the holders of any series of preferred stock, par value \$.01 per share, of the Corporation (the "Preferred Stock") to elect additional directors under specified circumstances, special meetings of the stockholders may be called only by the Chairman of the Board or by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

Section 2.3. Place of Meeting. The Board of Directors may designate the place of meeting for any meeting of the stockholders. If no designation is made by the Board of Directors, the place of meeting shall be the principal office of the Corporation.

Section 2.4. Notice of Meeting. Written or printed notice, stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be prepared and delivered by the Corporation not less than ten days nor more than sixty days before the date of the meeting, either personally, or by mail, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. Such further notice shall be given as may be required by law. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present. Any previously scheduled meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 2.5. Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series voting as a class, the holders of a majority of the voting power of the shares of such class or series shall constitute a quorum for the transaction of such business. The chairman of the meeting or a majority of the shares of Voting Stock so represented may adjourn the meeting from time to time, whether or not there is such a quorum (or, in the case of specified business to be voted on by a class or series, the chairman or a majority of the shares of such class or series so represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as required by law. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.6. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or as may be permitted by law, or by his duly authorized attorney-in-fact. Such proxy must be filed with the Secretary of the Corporation or his representative at or before the time of the meeting.

Section 2.7. Notice of Stockholder Business and Nominations.

(A). Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting delivered pursuant to Section 2.4 of these Bylaws, (b) by or at the direction of the Chairman of the Board of Directors or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in clauses (2)

and (3) of this paragraph (A) and this Bylaw and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A) (1) of this Bylaw, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that (i) in the case of the Corporation's first annual meeting in 1995 or (ii) in the event that the date of an annual meeting is advanced by more than thirty days, or delayed by more than seventy days, from the first anniversary date of the previous year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of the seventieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A) (2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least eighty days prior to the first anniversary of the preceding year's annual meeting (or, in the event of the Corporation's first annual meeting in 1995, not later than the close of business on the tenth day following the day on which public announcement is made of the meeting and of the nominees proposed to be nominated), a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(B) Special Meeting of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the



Corporation's notice of meeting pursuant to Section 2.4 of these Bylaws. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Bylaw and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice as required by paragraph (A) (2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth day prior to such special meeting and not later than the close of business on the later of the seventieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(C) General. (1) Only persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as director and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.8. Procedure for Election of Directors. Election of directors at all meetings of the stockholders at which directors are to be elected shall be by written ballot, and, except as otherwise set forth in the Certificate of Incorporation with respect to the right of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, a plurality of the votes cast thereat shall elect. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all matters other than the election of directors submitted to the stockholders at any meeting shall be decided by a majority of the votes cast with respect thereto.

Section 2.9. Inspectors of Elections; Opening and Closing the Polls.

(A) The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the General Corporation Law of the State of Delaware.

(B) The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.10. No Stockholder Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be affected by any consent in writing by such stockholders.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

Section 3.2. Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board but shall consist of not more than seventeen nor less than three directors. The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, with the term of office of the first class to expire at the 1995 annual meeting of stockholders, the term of office of the second class to expire at the 1996 annual meeting of stockholders and the term of office of the third class to expire at the 1997 annual meeting of stockholders. Each director shall hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders,

commencing with the 1996 annual meeting, (i) directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created. In order to be qualified to serve as a director, a person must (a) not have attained the age of seventy (70) years and (b) either (i) be an officer or employee of the Corporation and not (A) have voluntarily resigned from the position or office he held at the time of his election as a director, (B) have retired or been retired pursuant to the requirements of a pension, profit sharing, or similar plan or (C) have, at the time of his election as a director, held a position or office in the Corporation which has been changed, other than by an upward or expanded promotion or (ii) in the case of any person who is not an officer or employee of the Corporation, not (A) have retired from or severed his connection with the organization with which he was affiliated at the time of his election as a director or (B) have held a position or office with an organization with which he was affiliated at the time of his election as a director which has been changed, other than by an upward or expanded promotion and (C) not have a material conflict of interest with the Corporation (i) as defined by applicable laws and regulations and (ii) the existence and materiality of which as may be determined by a majority of the remaining directors. Whenever any director shall cease to be qualified to serve as a director his term shall expire, but such director shall continue to serve until his successor is elected and qualified; provided, however, that no director's term shall so expire if the Board of Directors shall have waived such qualification.

Section 3.3 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, each annual meeting of stockholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 3.4. Special Meetings. Special meetings of the Board of Directors shall be called at the request of the Chairman of the Board, the President or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

Section 3.5. Notice. Notice of any special meeting shall be given to each director at his business or residence in writing or by telegram or by telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Section 7.1 of Article VII hereof. A meeting may be held at any time

without notice if all the directors are present or if those not present waive notice of the meeting in writing, either before or after such meeting.

Section 3.6. Quorum. A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 3.7. Vacancies. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, and unless the Board of Directors otherwise determines, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 3.8. Committees. The Board of Directors may from time to time, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more Directors of the Corporation. The Board of Directors may designate one or more directors as alternative members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, except as otherwise provided by law. Unless the resolution of the Board of Directors expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Any such committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any such committee (or the member thereof, if only one) shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be the act of such committee. Each such committee shall keep a record of its acts and proceedings and shall report thereon to the Board of Directors whenever requested so to do. Any or all members of any such committee may be removed, with or without cause, by resolution of the Board of Directors, passed by a majority of the Whole Board.

Section 3.9. Removal. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class.

#### ARTICLE IV

##### OFFICERS

Section 4.1. Elected Officers. The elected officers of the Corporation shall be a Chairman of the Board, a President, a Secretary, a Treasurer, and such other officers as the Board of Directors from time to time may deem proper. The Chairman of the Board shall be chosen from the directors. All officers chosen by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof.

Section 4.2. Election and Term of Office. The elected officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Subject to Section 4.7 of these Bylaws, each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign.

Section 4.3. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to his office which may be required by law and all such other duties as are properly required of him by the Board of Directors. Except where by law the signature of the President is required, the Chairman of the Board shall possess the same power as the President to sign all certificates, contracts, and other instruments of the Corporation which may be authorized by the Board of Directors. He shall make reports to the Board of Directors and the stockholders, and shall perform all such other duties as are properly required of him by the Board of Directors. He shall see that all orders and resolutions of the Board of Directors and of any committee thereof are carried into effect.

Section 4.4. President. The President shall act in a general executive capacity and shall assist the Chairman of the Board in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chairman of the Board, perform all duties of the Chairman of the Board and preside at all meetings of stockholders and of the Board of Directors. The President may sign, alone or with the Secretary, or an Assistant Secretary, or any other

proper officer of the Corporation authorized by the Board of Directors, certificates, contracts, and other instruments of the Corporation as authorized by the Board of Directors.

Section 4.5. Secretary. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and Directors and all other notices required by law or by these Bylaws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board or the President, or by the Board of Directors, upon whose request the meeting is called as provided in these Bylaws. The Secretary shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Board of Directors, the Chairman of the Board or the President. The Secretary shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors, the Chairman of the Board or the President, and attest to the same.

Section 4.6. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chairman of the Board, or the President, taking proper vouchers for such disbursements. The Treasurer shall render to the Chairman of the Board, the President and the Board of Directors, whenever requested, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his duties in such amount and with such surety as the Board of Directors shall prescribe.

Section 4.7. Removal. Any officer elected by the Board of Directors may be removed by a majority of the members of the Whole Board whenever, in their judgment, the best interests of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or an employee plan.

Section 4.8. Vacancies. A newly created office and a vacancy in any office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors.

## ARTICLE V

### STOCK CERTIFICATES AND TRANSFERS

Section 5.1. Stock Certificates and Transfers.

(A) The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

(B) The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

#### ARTICLE VI

##### MISCELLANEOUS PROVISIONS

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 6.2. Dividends. The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its Certificate of Incorporation.

Section 6.3. Seal. The corporate seal of the Corporation shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.

Section 6.4. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the General Corporation Law of the State of Delaware, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or of the Board of Directors need be specified in any waiver of notice of such meeting.

Section 6.5. Audits. The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be made annually.

Section 6.6. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by serving written notice of such resignation on the Chairman of the Board, the President or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the President, or the Secretary or at such later date as is stated therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

Section 6.7. Indemnification and Insurance. (A) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (B) of Section 6.7 of this Bylaw with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) initiated by such person was authorized by the Board of Directors of the Corporation.

(B) If a claim under paragraph (A) of this Bylaw is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation



Law of the State of Delaware, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(C) Following any "change in control" of the Corporation of the type required to be reported under Item 1 of Form 8-K promulgated under the Exchange Act, any determination as to entitlement to indemnification shall be made by independent legal counsel selected by the claimant which independent legal counsel shall be retained by the Board of Directors on behalf of the Corporation.

(D) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

(E) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

(F) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any agent of the Corporation to the fullest extent of the provisions of this Bylaw with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(G) The right to indemnification conferred in this Bylaw shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, with limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

(H) Any amendment or repeal of this Article VI shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

## ARTICLE VII

## AMENDMENTS

Section 7.1. Amendments. These Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting and, in the case of a meeting of the Board of Directors, in a notice given no less than twenty-four hours prior to the meeting; provided, however, that, in the case of amendments by stockholders, notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law, the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to alter, amend or repeal any provision of these Bylaws.

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Capital One Financial Corporation,  
Issuer

to

Trustee

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SENIOR INDENTURE  
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Dated as of \_\_\_\_\_, 1996

Senior Debt Securities

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Trust Indenture Act Section	Indenture Section
Section 310(a)(1)	606
(a)(2)	606
(b)	607
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(a)(2)	504
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Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including 317 are a part of and govern every qualified indenture, whether or not physically contained herein.

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SENIOR INDENTURE, dated as of \_\_\_\_\_ (the "Indenture"), between Capital One Financial Corporation, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), having its corporate office located at 2980 Fairview Park Drive, Falls Church, Virginia 22042, and \_\_\_\_\_, a national banking association duly organized and existing under the laws of the United States (hereinafter called the "Trustee"), having its Corporate Trust Office located at \_\_\_\_\_.

#### RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured senior debentures, notes or other evidences of indebtedness (hereinafter called the "Securities"), unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, to be issued in one or more series and to have such other provisions as shall be fixed as hereinafter provided.

The Company has duly authorized the execution and delivery of this Indenture. All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

## ARTICLE ONE

## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

## Section 101. Definitions.

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

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

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

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

(4) the words "herein", "hereof", "hereto" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms used principally in certain Articles hereof are defined in those Articles.

"Act", when used with respect to any Holders, has the meaning specified in Section 104.

"Additional Amounts" means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified therein and which are owing to such Holders.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with

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

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 610 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Authorized Newspaper" means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

"Bearer Security" means any Security in the form established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means the board of directors of the Company or any committee of that board duly authorized to act generally or in any particular respect for the Company hereunder.

"Board Resolution" means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or any duly authorized committee thereof and to be in full force and effect on the date of such certification, delivered to the Trustee.

"Business Day", with respect to any Place of Payment or other location, means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a Legal Holiday in such Place of Payment or other location.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934 or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means all shares now or hereafter authorized of any class of common stock of the Company presently authorized and stock of any other class into which such shares may hereafter have been changed.

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

"Company Request" and "Company Order" mean, respectively, a written request or order, as the case may be, signed in the name of the Company by the Chairman of the Board of Directors and Chief Executive Officer, a Vice Chairman, the President and Chief Operating Officer, a Senior Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

"Consolidated Assets" means all assets owned directly by the Company or indirectly by the Company through any Subsidiary and reflected on the Company's consolidated balance sheet prepared in accordance with generally accepted accounting principles.

"Controlled Subsidiary" means each Significant Subsidiary if at least 80% of the outstanding shares of its Voting Stock is at the time owned by the Company or by one or more Controlled Subsidiaries of the Company or by the Company and one or more Controlled Subsidiaries.

"Conversion Price" means the price per share of Common Stock from time to time in effect at which any Convertible Security may be converted into Common Stock as determined by or pursuant to the terms of this Indenture.

"Convertible Security" or "Convertible Securities" means any Security or Securities, as the case may be, which are by their terms convertible into Common Stock.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of original execution of this Indenture is located at the address specified in the first paragraph of this instrument.

"Corporation" includes corporations and, except for purposes of Article Eight, associations, companies and business trusts.

"Coupon" means any interest coupon appertaining to a Bearer Security.

"Currency" or "Money", with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means the unit or units of legal tender for the payment of public and private debts (or any composite thereof) in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof, means Dollars.

"Currency Indexed Note" means any Security with the amount of principal payments determined by reference to an index Currency.

"Date of Conversion" with respect to any Convertible Security or portion thereof to be converted, means the date on which such Convertible Security shall be surrendered for conversion and notice given in accordance with the provisions of Article Sixteen.

"Defaulted Interest" has the meaning specified in Section 307.

"Depository" or "U.S. Depository" means, with respect to any Security issuable or issued in the form of one or more global Securities, the Person designated as Depository or U.S. Depository by the Company in or pursuant to this Indenture, which Person must be, to the extent required by applicable law or regulation, a clearing agency registered under the Securities Exchange Act of 1934, as amended, and, if so provided with respect to any Security, any successor to such Person. If at any time there is more than one such Person, "Depository" or "U.S. Depository" shall mean, with respect to any Securities, the qualifying entity which has been appointed with respect to such Securities.

"Dollars" or "\$" means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

"Event of Default" has the meaning specified in Section 501.

"Government Obligations", with respect to any Security, means (i) direct obligations of the government or governments which issued the Currency in which the principal of or any premium or interest on such Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an



agency or instrumentality of such government or governments, in each case where the payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by such government or governments, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

"Holder", in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register and, in the case of any Bearer Security, means the bearer thereof and, in the case of any Coupon, means the bearer thereof.

"Indenture" means this instrument as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security and any Coupon appertaining thereto established pursuant to Section 301 (as such terms and provisions may be amended pursuant to the applicable provisions hereof).

"Independent Public Accountants" means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Securities or the Coupons, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants. Such accountants or firm shall be entitled to rely upon any Opinion of Counsel as to the interpretation of any legal matters relating to the Indenture or certificates required to be provided hereunder.

"Indexed Security" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity and/or interest to be paid thereon may be determined by reference to the exchange rate of one or more specified currencies relative to an index or one or more equity or other indices and/or formulae or the price of one or more specified commodities or by such other methods or formulae

as may be determined in accordance with this Indenture.

"Interest", with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity, and, when used with respect to a Security which provides for payment of Additional Amounts pursuant to Section 1004, includes such Additional Amounts.

"Interest Payment Date", with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Legal Holiday", with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions or trust companies in such Place of Payment or other location are not authorized or obligated to be open.

"Maturity", with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture, whether at the Stated Maturity or by declaration of acceleration, notice of redemption, notice of option to elect repayment or otherwise, and includes Redemption Date.

"Office or Agency", with respect to any Securities, means an office or agency of the Company maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other office or agency of the Company maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such office or agency, the Corporate Trust Office of the Trustee.

"Officers' Certificate" means a certificate signed by the Chairman of the Board and Chief Executive Officer, a Vice Chairman, the President and Chief Operating Officer, any Senior Vice President, the Treasurer, any Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that complies with the requirements of Section 314(e) of the Trust Indenture Act.

"Original Issue Discount Security" means a Security issued pursuant to this Indenture which provides for declaration of an amount less than the principal face

amount thereof to be due and payable upon acceleration pursuant to Section 502.

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

- (i) any such Security theretofore cancelled by the Trustee or the Security Registrar or delivered to the Trustee or the Security Registrar for cancellation;
- (ii) any such Security or portions thereof for whose payment at the Maturity thereof money in the necessary amount has been theretofore deposited pursuant hereto with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (iii) any such Security with respect to which the Company has effected defeasance pursuant to Section 402 hereof;
- (iv) any such Security which has been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Company; and
- (v) Convertible Securities converted into Common Stock in accordance with Article Sixteen hereof;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be declared (or shall have been declared to be) due and payable upon a declaration of

acceleration thereof pursuant to Section 502 at the time of such determination, (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided in or pursuant to this Indenture, (iii) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the U.S. dollar equivalent based on the applicable exchange rate or rates at the time of sale (or in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined in (ii)); and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee (A) the pledgee's right so to act with respect to such Securities and (B) that the pledgee is not the Company or any other obligor upon the Securities or any Coupons appertaining thereto or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to any Security or any Coupon on behalf of the Company.

"Person" means any individual, Corporation, partnership, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security is payable as provided in or pursuant to this Indenture.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or any Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same debt as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

"Redemption Date", with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture.

"Registered Security" means any Security established pursuant to Section 201 which is registered in the Security Register.

"Regular Record Date" for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture as the "Regular Record Date".

"Responsible Officer" means an officer of the Trustee assigned to the Corporate Trust Office, including any Vice President, any trust officer or any other officer performing functions similar to those performed by the persons who at the time shall be such officers, and any other officer of the Trustee to whom a matter is referred because of his knowledge of and familiarity with the particular subject.

"Security" or "Securities" means any Security or Securities, as the case may be, authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities", with respect to any such Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Significant Subsidiary" means any Subsidiary of the Company the Consolidated Assets of which constitute 20% or more of the Company's Consolidated Assets.

"Special Record Date" for the payment of any Defaulted Interest on any Registered Security means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity", with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture as the fixed date on which the principal of such Security or such installment of principal or interest is or such

Additional Amounts are due and payable.

"Subsidiary" means any Corporation of which at the time of determination the Company or one or more Subsidiaries owns or controls directly or indirectly more than 50% of the shares of Voting Stock.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as the case may be.

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

"United States", except as otherwise provided herein or in any Security, means the United States of America (including the states thereof and the District of Columbia), its territories and possessions and other areas subject to its jurisdiction.

"United States Alien", except as otherwise provided in or pursuant to this Indenture, means any Person who, for United States Federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States Federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

"Vice President", when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "Vice President".

"Voting Stock" means stock of a Corporation of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Corporation provided that, for the purposes hereof, stock which carries only the right to vote conditionally on the happening of an event shall not be considered voting stock whether or not such event

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shall have happened.

Section 102. Compliance Certificates and Opinions.

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

Section 103. Form of Documents Delivered to Trustee.

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

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

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

Section 104. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Fifteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, a Holder, including a U.S. Depository that is a Holder of a global Security, may make, give or take, by a proxy, or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders, and a U.S. Depository that is a Holder of a global Security may provide its proxy or proxies to the beneficial owners of interests in any such global Security through such U.S. Depository's standing instructions and customary practices.

The Trustee shall fix a record date for the purpose of determining the Persons who are beneficial owners of interest in any permanent global Security held by a U.S. Depository entitled under the procedures of such U.S. Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization,



direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 104.

(c) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved by the Security Register.

(d) The ownership, principal amount and serial numbers of Bearer Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depositary, by any trust company, bank, banker or other depositary reasonably acceptable to the Company, wherever situated, if such certificate shall be deemed by the Company and the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership, principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of the commencement and the date of the termination of holding the same may also be proved in any other manner which the Company and the Trustee deems sufficient.

(e) If the Company shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may at its option (but is not obligated to), by Board Resolutions, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand,

authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

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

Section 105. Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

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

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

Section 106. Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such Notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if such Securities are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the Company shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

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

Section 107. Language of Notices.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 108. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with any duties under any required provision of the Trust Indenture Act imposed hereon by Section 318(c) thereof, such required provision shall control.

Section 109. Effect of Headings and Table of Contents.

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

Section 110. Successors and Assigns.

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

Section 111. Separability Clause.

In case any provision in this Indenture, any Security or any Coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 112. Benefits of Indenture.

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

Section 113. Governing Law.

This Indenture, the Securities and any Coupons shall be governed by and construed in accordance with the laws of the State of New York applicable to

agreements made or instruments entered into and, in each case, performed in said state.

#### Section 114. Legal Holidays

In any case where any Interest Payment Date, Stated Maturity or Maturity of any Security, or the last date on which a Holder has the right to convert his Securities shall be a Legal Holiday at any Place of Payment, then (notwithstanding any other provision of this Indenture, any Security or any Coupon other than a provision in any Security or Coupon that specifically states that such provision shall apply in lieu of this Section 114) or conversion payment of the Securities need not be made at such Place of Payment on such date, but may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or at the Stated Maturity or Maturity, or on the last such date for conversion, and no interest shall accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date or Stated Maturity or Maturity, or last such date for conversion, as the case may be.

### ARTICLE TWO

#### SECURITIES FORMS

#### Section 201. Forms Generally.

Each Registered Security, Bearer Security, Coupon and temporary global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officers executing such Security or Coupon as evidenced by their execution of such Security or Coupon.

Unless otherwise provided in or pursuant to this Indenture, the Securities shall be issuable in registered form without Coupons.

Definitive Securities and definitive Coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved

border or steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing such Securities or Coupons, as evidenced by their execution of such Securities or Coupons.

Section 202. Form of Trustee's Certificate of Authentication.

Subject to Section 610, the Trustee's certificate of authentication shall be in substantially the following form:

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

\_\_\_\_\_, as Trustee

By \_\_\_\_\_ Authorized Officer

Section 203. Securities in Global Form.

If Securities of a series shall be issuable in global form, any such Security may provide that it or any number of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered pursuant to Section 303 or 304 with respect thereto. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Company with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officers' Certificate and need not be accompanied by an Opinion of Counsel.

ARTICLE THREE  
THE SECURITIES

Section 301. Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series.

With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto,

(1) the title of such Securities and the series in which such Securities shall be included;

(2) any limit upon the aggregate principal amount of the Securities of such title or the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 905, 1107 or 1602 or the terms of such Securities);

(3) whether such Securities are to be issuable as Registered Securities, as Bearer Securities or alternatively as Bearer Securities and Registered Securities, and whether the Bearer Securities are to be issuable with Coupons, without Coupons or both, and any restrictions applicable to the offer, sale or delivery of the Bearer Securities and the terms, if any, upon which Bearer Securities may be exchanged for Registered Securities and vice versa;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether beneficial owners of interests in any such global Security may exchange such interest for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 305, and (ii) the name of the Depository or the U.S. Depository, as the case may be, with respect to any

global Security;

(5) if any of such Securities are to be issuable as Bearer Securities or in global form, the date as of which any such Bearer Security or global Security shall be dated (if other than the date of original issuance of the first of such Securities to be issued);

(6) if any of such Securities are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form payable in respect of an Interest Payment Date therefor prior to the exchange, if any, of such temporary Bearer Security for definitive Securities shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(7) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal of such Securities is payable;

(8) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, whether and under what circumstances Additional Amounts on such Securities or any of them shall be payable, and the basis upon which interest shall be calculated;

(9) if in addition to or other than The City of New York, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be surrendered for registration of transfer, any of such Securities may be surrendered for exchange or conversion and notices or demands to or upon the Company in respect of such Securities and this Indenture may be served;

(10) whether any of such Securities are to be redeemable at the option of the Company and, if so, the period or periods within which, the price or



prices at which and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Company;

(11) whether the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or at the option of any Holder thereof and, if so, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(12) the denominations in which any of such Securities that are Registered Securities shall be issuable if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any of such Securities that are Bearer Securities shall be issuable if other than the denomination of \$5,000;

(13) if other than the principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 501 or the method by which such portion is to be determined;

(14) if other than Dollars, the Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable;

(15) the Currency in which payment of principal of, any premium or interest on or any Additional Amounts with respect to any Securities shall be payable if other than the currency of the United States, and the time and manner of determining the exchange rate between the Currency in which such Securities are payable and the Currency in which such Securities or any of them are so payable;

(16) whether the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(17) any deletions from, modifications of or additions to the Events

of Default or covenants of the Company with respect to any of such Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(18) the applicability, if any, of Section 402 to any of such Securities and any provisions in modification of, in addition to or in lieu of any of the provisions of Section 402;

(19) whether the principal of (and premium, if any) or interest (including Additional Amounts), if any, on the Securities of the series are to be payable, at the election of the Company or any Holder thereof or otherwise, in a currency or currencies, currency unit or units or composite currency or currencies other than that in which such Securities or any of them are denominated or stated to be payable, the period or periods within which, and the other terms and conditions upon which, such election, if any, may be made, and the time and manner of determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities or any of them are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities or any of them are to be so payable;

(20) if any of such Securities are to be issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(21) if there is more than one Trustee, the identity of the Trustee and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities; and

(22) whether Securities of the series are to be Convertible Securities and, if so, the initial Conversion Price applicable thereto, the period or periods within which the conversion privilege may be exercised, the class of Common Stock into which such Convertible Securities may be converted and any additions, deletions, modifications or variations to the provisions of Article Sixteen hereof applicable thereto;

(23) any other terms of such Securities (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and all Coupons, if any, appertaining to Bearer Securities of such series shall be substantially identical except as to Currency of payments due thereunder, denomination and the rate or rates of interest, if any, and Maturity, the date from which interest, if any, shall accrue and except as may otherwise be provided by the Company in or pursuant to the Board Resolution and set forth in the Officers' Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. All Securities of any one series need not be issued at the same time and, unless otherwise so provided by the Company, a series may be reopened for issuances of additional Securities of such series or to establish additional terms of such series of Securities.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to a Board Resolution, the Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of such series.

Section 302. Currency; Denominations.

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without Coupons in denominations of \$1,000 and any integral multiple thereof, and the Bearer Securities denominated in Dollars shall be issuable in the denomination of \$5,000. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 303. Execution, Authentication, Delivery and Dating.

Securities shall be executed on behalf of the Company by its Chairman of the Board and Chief Executive Officer, its President and Chief Operating Officer, the Chief Financial Officer, the Treasurer and any Assistant Treasurer or one of its Senior Vice Presidents under its corporate seal reproduced thereon and attested by its Corporate Secretary or one of its Assistant Secretaries. Coupons shall be executed on behalf of the Company by the Chief Financial Officer, the Treasurer or any Assistant Treasurer of the Company. The signature of any of these officers on the Securities or any Coupons appertaining thereto may be manual or facsimile.

Securities and any Coupons appertaining thereto bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them

have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities, together with any Coupons appertaining thereto, executed by the Company, to the Trustee for authentication, together with the Board Resolution and Officers' Certificate or supplemental indenture with respect to such Securities referred to in Section 301 and a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order and subject to the provisions hereof shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities and any Coupons appertaining thereto, the Trustee shall be entitled to receive, and (subject to Article Six hereof) shall be fully protected in relying upon an Opinion of Counsel substantially to the effect that:

(a) the form or forms and terms of such Securities and Coupons, if any, have been established in conformity with the provisions of this Indenture;

(b) that such Securities, and Coupons, when completed by appropriate insertion and executed and delivered by the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any securities denominated other than in Dollars (or a foreign currency or foreign currency unit judgment in respect of such claim) be converted into Dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments in foreign currency or currency units or payments outside the United States; and will entitle the Holders thereof to the benefits of this Indenture; such Opinion of Counsel need express no opinion as to the availability of equitable remedies;

(c) all legal requirements in respect of the execution and

delivery by the Company of such Securities and Coupons, if any, have been complied with; and

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

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officers' Certificate at the time of issuance of each Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Indenture relating to authentication and delivery of such Securities continue to have been complied with.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any temporary Bearer Security in global form shall be dated as of the date specified in or pursuant to this Indenture.

No Security or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 610 executed by or on behalf of the Trustee by the manual signature of one of its authorized officers or by an Authenticating Agent. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as permitted by Section 306 or 307, the Trustee shall not authenticate and deliver any Bearer Security unless all Coupons appertaining thereto then matured have been detached and cancelled.

#### Section 304. Temporary Securities.

Pending the preparation of definitive Securities, the Company may execute and deliver to the Trustee and, upon Company Order, the Trustee shall

authenticate and deliver, in the manner provided in Section 303, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form or, if authorized in or pursuant to this Indenture, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Company executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions thereof, if temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Upon surrender for cancellation of any one or more temporary Securities (accompanied by any unmatured Coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and containing identical terms and provisions; provided, however, that no definitive Bearer Security, except as provided in or pursuant to this Indenture, shall be delivered in exchange for a temporary Registered Security; and provided, further, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in or pursuant to this Indenture. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

#### Section 305. Registration, Transfer and Exchange.

With respect to the Registered Securities of each series, if any, the Company shall cause to be kept a register (each such register being herein sometimes referred to as the "Security Register") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Securities of such series and of transfers of the Registered Securities of such series. In the event that the Trustee shall not be the Security Registrar, it shall have the right to examine the Security Register at all reasonable times. The Trustee is hereby initially appointed as Security Registrar for

each series of Securities. In the event that the Trustee shall cease to be Security Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times.

Upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

At the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

If provided in or pursuant to this Indenture, with respect to Securities of any series, at the option of the Holder, Bearer Securities of such series may be exchanged for Registered Securities of such series containing identical terms, denominated as authorized in or pursuant to this Indenture and in the same aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any Office or Agency for such series, with all unmatured Coupons and all matured Coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 1002, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such Office or Agency for such series in exchange for a Registered

Security of such series and like tenor after the close of business at such Office or Agency on (i) any Regular Record Date and before the opening of business at such Office or Agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such Office or Agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the Person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

If expressly provided with respect to Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided with respect to such series.

Whenever any Securities are surrendered for exchange as contemplated by the immediately preceding two paragraphs, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, any global Security shall be exchangeable for definitive Securities only if (i) the Depository notifies the Company that it is at any time unwilling, unable or ineligible to continue as Depository and a successor depository is not appointed by the Company within 60 days of the date the Company is so informed in writing, (ii) the Company executes and delivers to the Trustee a Company Order to the effect that such global Security shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing with respect to the Securities. If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations, as directed by the Depository, as are required by or pursuant to this Indenture and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of, such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the U.S. Depository or such other Depository as shall



be specified in the Company Order with respect thereto, and in accordance with instructions given to the Trustee and the U.S. Depository or such other Depository, as the case may be (which instructions shall be in writing but need not be contained in or accompanied by an Officers' Certificate or be accompanied by an Opinion of Counsel), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which (unless such Securities are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the global Security shall be issuable only in the form in which the Securities are issuable, as provided in or pursuant to this Indenture) shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series and continuing identical terms to be redeemed and ending on the relevant Redemption Date; and provided, further, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository or the U.S. Depository, as the case may be, or such other Depository or U.S. Depository referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such Office or Agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

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

No service charge shall be made for any registration of transfer or exchange, redemption or conversion of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 905 or 1107 not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Company shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of like tenor and the same series under Section 1103 and ending at the close of business (A) if Securities of the series are issuable only as Registered Securities, on the day of the mailing of the relevant notice of redemption, and (B) if Securities of the series are issuable as Bearer Securities, on the day of the first publication of the relevant notice of redemption or, if Securities of the series are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except in the case of any Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except, to the extent provided with respect to such Bearer Security, that such Bearer Security may be exchanged for a Registered Security of like tenor and the same series, provided that such Registered Security shall be immediately surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture or (iv) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, subject to the provisions of this Section 306, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with

Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to the surrendered Security.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or Coupon has been acquired by a bona fide purchaser, the Company shall execute and, upon the Company's request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains.

Notwithstanding the foregoing provisions of this Section 306, in case any mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or Coupon; provided, however, that payment of principal of, any premium or interest on or any Additional Amounts with respect to any Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an Office or Agency for such Securities located outside the United States and, unless otherwise provided in or pursuant to this Indenture, any interest on Bearer Securities and any Additional Amounts with respect to such interest shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section 306, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security, with any Coupons appertaining thereto issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen Coupon appertains shall constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Security and Coupons appertaining thereto or the destroyed, lost or stolen Coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and any Coupons, if any, duly issued hereunder.

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

Section 307. Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest. Unless otherwise provided in or pursuant to this Indenture, in case a Bearer Security is surrendered in exchange for a Registered Security after the close of business at an Office or Agency for such Security on any Regular Record Date therefor and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date therefor, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date and interest shall not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be 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 such Registered Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held

in trust for the benefit of the Person entitled to such Defaulted Interest as in this Clause provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of such Registered Security (or a Predecessor Security thereof) at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company cause a similar notice to be published at least once in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of 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 Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2). In case a Bearer Security is surrendered at the Office or Agency for such Security in exchange for a Registered Security after the close of business at such Office or Agency on any Special Record Date and before the opening of business at such Office or Agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such proposed date of payment and Defaulted Interest shall not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

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

At the option of the Company, interest on Registered Securities 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 Security Register.

Subject to the foregoing provisions of this Section 307 and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. Persons Deemed Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of, any premium and (subject to Sections 305 and 307) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and neither the Company, nor the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security or the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof, for the purpose of conversion and for all other purposes whatsoever, whether or not any payment with respect to such Security or Coupon shall be overdue, and neither the Company, nor the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such global Security, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 309. Cancellation.

All Securities and Coupons surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons, as well as Securities and Coupons

surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities and Coupons held by the Trustee shall be destroyed by the Trustee, unless by a Company Order the Company directs their return to it in a timely manner.

Section 310. Computation of Interest.

Except as otherwise provided in or pursuant to this Indenture, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

Section 401. Satisfaction and Discharge of Indenture.

Upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and any right to receive Additional Amounts), and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities surrendered in exchange for Registered Securities and maturing after such exchange whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and Coupons which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) Coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date

whose surrender has been waived as provided in Section 1107, and (iv) Securities and Coupons for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all Securities and, in the case of (i) or (ii) below, any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

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

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

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, money and/or Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without consideration of any reinstatement thereof, will provide not later than the opening of business on the due dates of any payment of principal and any premium, interest and Additional Amounts with respect thereto, or a combination thereof, money in an amount sufficient to pay and discharge the entire indebtedness on such Securities and Coupons not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent



herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of all series as to which it is Trustee and if the other conditions thereto are met. In the event there are two or more Trustees hereunder, then the effectiveness of any such instrument shall be conditioned upon receipt of each such instrument from all Trustees hereunder.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 605, the obligations of the Trustee to any Authenticating Agent under Section 610 and, if money and/or Government Obligations shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 403 and the last paragraph of Section 1003 shall survive.

In the event that, subsequent to the date a discharge is effected pursuant to this Section 401, Additional Amounts in excess of those established as of the date such discharge is effected become payable in respect of any Securities, in order to preserve the benefits of the discharge established hereunder, the Company shall deposit or cause to be deposited in accordance with provisions of this Section 401, within ten business days prior to the earlier to occur of (i) one year after the existence of such excess Additional Amounts is established and (ii) the date the first payment in respect of any portion of such excess Additional Amounts becomes due, such additional funds as are necessary to satisfy the provisions of this Section 401 as if a discharge were being effected as of the date of such subsequent deposit. For purposes of this paragraph, the existence of excess Additional Amounts shall be deemed to have been established as of the date the governmental authority imposing the tax, assessment or other governmental charge resulting in the Additional Amounts first publishes the legislation, regulation or other enactment adopting such tax, assessment or other governmental charge. Failure to comply with the requirements of this paragraph shall result in the termination of the benefits of the discharge established by this Section 401.

Section 402.           Satisfaction, Discharge and Defeasance of Securities of any Series.

If provision is made in or pursuant to this Indenture for defeasance of Securities of any series and any Coupons appertaining thereto pursuant to this Section

402, the Company may at any time elect to have this Section 402 be applied to the outstanding Securities and the Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Securities of such series and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of such indebtedness, when

(1) no Event of Default has occurred and is continuing, or would occur upon the giving of notice or the lapse of time at the time such satisfaction and discharge is being effected and either

(A) with respect to all Outstanding Securities of such series and any Coupons appertaining thereto, the Company has irrevocably deposited or caused to be deposited with the Trustee, as trust funds and/or obligations in trust for such purpose, money and/or Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without consideration of any reinvestment thereof, will provide not later than the opening of business on the due dates of any payment of principal and any premium, interest and Additional Amounts with respect thereto, or a combination thereof, money in an amount sufficient to pay and discharge the entire indebtedness on all Outstanding Securities of such series and any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be, as contemplated by the penultimate paragraph of this Section 402; or

(B) the Company has properly fulfilled such other means of satisfaction and discharge as is provided in or pursuant to this Indenture for the Securities of such series; and

(2) the Company has paid or caused to be paid all other sums payable hereunder with respect to the Outstanding Securities of such series and any Coupons appertaining thereto; and

(3) the Company has delivered to the Trustee a certificate signed by Independent Public Accountants certifying as to the sufficiency of the amounts deposited pursuant to subsections (A)(i) or (ii) of this Section for payment of the principal of, any premium and interest on and any Additional

Amounts with respect to such Securities and any Coupons appertaining thereto on the dates such payments are due, an Officers' Certificate and an Opinion of Counsel, each such Certificate and Opinion stating that no Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities shall have occurred and all conditions precedent herein provided for relating to the satisfaction and discharge of the entire indebtedness on all Outstanding Securities of any such series and any Coupons appertaining thereto shall have been complied with; and

(4) the Company has delivered to the Trustee

(A) an opinion of independent counsel that the Holders of the Securities of such series and any Coupons appertaining thereto shall have no federal income tax consequences as a result of such deposit and termination; and

(B) if the Securities of such series are then listed on the New York Stock Exchange, an opinion of independent counsel that the Securities of such series shall not be delisted as a result of the exercise of this option.

Any deposits with the Trustee referred to in subsection (1)(A) of this Section shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. If any Outstanding Securities of such series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory sinking fund requirement or otherwise, the Company shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Upon the satisfaction of the conditions set forth in this Section 402 with respect to all the Outstanding Securities of any series and any Coupons appertaining thereto, the terms and conditions of such series (including the terms and conditions with respect thereto set forth in this Indenture, other than the provisions of Sections 305, 306, and 1002 and other than the right of Holders of Securities of such series and any Coupons appertaining thereto to receive, from the trust fund described in this Section, payment of the principal of, any premium or the interest on, or any Additional Amounts with respect to such Securities and any Coupons appertaining thereto when such payments shall be due) and the rights, powers, duties and immunities of the Trustee hereunder with respect to the Securities of such series shall no longer be binding upon, or applicable to, the Company; provided that the Company shall not be discharged from

any payment obligations in respect of Securities of such series or any Coupons appertaining thereto which are deemed not to be Outstanding under clause (iii) of the definition of Outstanding if such obligations continue to be valid obligations of the Company under applicable law.

In the event that, subsequent to the date a defeasance is effected pursuant to this Section 402 with respect to Securities of any series, Additional Amounts in excess of those established as of the date such defeasance is effected become payable in respect of such Securities, in order to preserve the benefits of the defeasance established hereunder with respect to such series, the Company shall deposit or cause to be deposited in accordance with the provisions of this Section 402, within ten business days prior to the earlier to occur of (i) one year after the existence of such excess Additional Amounts is established and (ii) the date the first payment in respect of any portion of such excess Additional Amounts becomes due, such additional funds as are necessary to satisfy the provisions of this Section 402 as if a defeasance were being effected as of the date of such subsequent deposit. For purposes of this paragraph, the existence of excess Additional Amounts shall be deemed to have been established as of the date the governmental authority imposing the tax, assessment or other governmental charge resulting in the Additional Amounts first publishes the legislation, regulation or other enactment adopting such tax, assessment or other governmental charge. Failure to comply with the requirements of this paragraph shall result in the termination of the benefits of the defeasance established by this Section 402 with respect to the Securities of such series.

Section 403. Application of Trust Money.

Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations deposited with the Trustee pursuant to Section 401 or 402 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the Coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, interest and Additional Amounts for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

ARTICLE FIVE

REMEDIES

"Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or be effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest on or any Additional Amounts payable in respect of any Security of such series when such interest becomes or such Additional Amounts become due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of and any premium on any Security of such series when it becomes due and payable at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of such series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Securities (other than a covenant or warranty a default in the performance or the breach of which is elsewhere in this Section specifically dealt with or which has been expressly included in this Indenture solely for the benefit of a series of Securities other than such series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company or any Significant Subsidiary for money borrowed, whether such indebtedness now exists or shall hereafter be created, shall happen and shall result in such indebtedness in principal amount in excess of \$10,000,000 becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such acceleration shall not be rescinded or annulled within a period of 30 days after there shall have been given, by registered or certified mail, to the

Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such event of default and requiring the Company to cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) the entry by a court having competent jurisdiction of:

(a) a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(b) a decree or order adjudging the Company or any Significant Subsidiary to be insolvent, or approving a petition seeking reorganization, arrangement, adjustment or composition of the Company or any Significant Subsidiary and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(c) a final and non-appealable order appointing a custodian, receiver, liquidator, assignee, trustee or other similar official of the Company or any Significant Subsidiary or of any substantial part of the property of the Company or any Significant Subsidiary, as the case may be, or ordering the winding up or liquidation of the affairs of the Company or any Significant Subsidiary; or

(7) the commencement by the Company or any Significant Subsidiary of a voluntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or of a voluntary proceeding seeking to be adjudicated insolvent or the consent by the Company or any Significant Subsidiary to the entry of a decree or order for relief in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or to the commencement of any insolvency proceedings against it, or the filing by the Company or any Significant Subsidiary of a petition or answer or consent seeking reorganization or relief under any applicable law, or the consent by the Company or any Significant Subsidiary to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or similar official of the Company or any Significant Subsidiary or any substantial part of the property of the Company or any Significant Subsidiary or the making by the Company or any Significant Subsidiary of an

assignment for the benefit of creditors, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action; or

(8) any other Event of Default provided in or pursuant to this Indenture with respect to Securities of such series.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of such series may declare the principal of all the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

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

(A) all overdue installments of any interest on and any Additional Amounts with respect to all Securities of such series and any Coupon appertaining thereto,

(B) the principal of and any premium on any Securities of

such series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of any interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of such series, other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 513.

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

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(1) default is made in the payment of any installment of interest on or any Additional Amounts with respect to any Security or any Coupon appertaining thereto when such interest or Additional Amounts shall have become due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of or any premium on any Security at its Maturity,

the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities and any Coupons appertaining thereto, the whole amount of money then due and payable with respect to such Securities and any Coupons appertaining thereto, with interest upon the overdue principal, any premium and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount of money



as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

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

#### Section 504. Trustee May File Proofs of Claim.

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

(i) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and any Coupons appertaining thereto 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 or counsel) and of the Holders of Securities or any Coupons allowed in such judicial proceeding, and

(ii) to collect and receive any monies 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 of Securities or any Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities or any Coupons, to pay to the Trustee any amount due to 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 605.

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

Section 505. Trustee May Enforce Claims without Possession of Securities or Coupons.

All rights of action and claims under this Indenture or any of the Securities or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or Coupons 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 or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of a Security or Coupon in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of the Securities or Coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon

surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 605;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and any Coupons for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and Coupons for principal and any premium, interest and Additional Amounts, respectively;

THIRD: The balance, if any, to the Person or Persons entitled thereto.

#### Section 507. Limitations on Suits.

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

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

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

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

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in

principal amount of the Outstanding Securities of such series;

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

Section 508. Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts and to Convert any Convertible Security

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of, any premium and (subject to Sections 305 and 307) interest on, and any Additional Amounts with respect to such Security or payment of such Coupon, as the case may be, on the respective Stated Maturity or Maturities therefor specified in such Security or Coupon (or, in the case of redemption, on the Redemption Date or, in the case of repayment at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and to institute suit for the enforcement of any such payment, and shall have the right to convert any such Security which is a Convertible Security in accordance with the terms hereof and thereof and to institute suit for enforcement of such right; and such rights shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies.

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

Section 510. Rights and Remedies.

Except as otherwise provided with respect to the replacement or payment

of mutilated, destroyed, lost or stolen Securities or Coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security or a Coupon is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security or Coupon 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. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security or a Coupon may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

Section 512. Control by Holders of Securities.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series and any Coupons appertaining thereto, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of any series,

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

(3) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series not joining in such action.

## Section 513. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series and any Coupons appertaining thereto may waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to any Security of such series or any Coupons appertaining thereto, or

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

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

## Section 514. Waiver of Stay or Extension Laws.

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

## ARTICLE SIX

## THE TRUSTEE

## Section 601. Certain Rights of Trustee.

Subject to Sections 315(a) through 315(d) of the Trust

Indenture Act:

(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, direction, consent, order, bond, debenture, note, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order (in each case, other than delivery of any Security, together with any Coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any Coupons appertaining thereto pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(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, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent or attorney; and

(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.

Section 602. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any Coupons shall be taken as the statements of the Company and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility and Qualification on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

Section 603. May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person.

Section 604. Money Held in Trust.



Except as provided in Section 403 and Section 1003, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 605. Compensation and Reimbursement.

The Company agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or bad faith; and

(3) to indemnify the Trustee and its agents for, and to hold them harmless against, any loss, liability or expense incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section 605, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, and premium or interest on or any Additional Amounts with respect to Securities or any Coupons appertaining thereto.

Section 606. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder that is a Corporation permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus

(computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 606, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 607. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 608.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 608 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(c) 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 the Company.

(d) If at any time:

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

(2) the Trustee shall cease to be eligible under Section 606 and shall fail to resign after written request therefor by the Company or any such Holder, 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,

then, in any such case, (i) the Company, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 608. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 608, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by Section 608, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Registered Securities, if any, of such series as their names and

addresses appear in the Security Register and, if Securities of such series are issued as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 608. Acceptance of Appointment by Successor.

(a) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 605.

(b) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder

separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any Person appointed hereunder as a successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section 608, as the case may be.

(d) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

Section 609. Merger, Conversion, Consolidation or Succession to Business.

Any Corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall

have been authenticated but not delivered by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 610. Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer or partial redemption or conversion thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Company and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 610, it shall resign immediately in the manner and with the effect specified in this Section 610.

Any Corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, provided such Corporation shall be otherwise eligible under this Section 610, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the

agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall (i) mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register, and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 610.

The Trustee agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section 610 and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 605.

The provisions of Sections 308, 602 and 603 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section 610, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

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

\_\_\_\_\_, As Trustee

By \_\_\_\_\_ As Authenticating Agent

By \_\_\_\_\_ Authorized Signatory

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officers' Certificate by the Company), shall appoint in accordance with this Section 610 an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

ARTICLE SEVEN

HOLDER'S LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 701. Company to Furnish Trustee Names and Addresses of Holders.

In accordance with Section 312(a) of the Trust Indenture Act, the Company shall furnish or cause to be furnished to the Trustee

(a) semi-annually with respect to Securities of each series on



June 30 and December 31 of each year or upon such other dates as are set forth in or pursuant to the Board Resolution or indenture supplemental hereto authorizing such series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date, and

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

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

Section 702. Preservation of Information; Communications to Holders.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or Coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 703. Reports by Trustee.

(a) Within 60 days after September 15 of each year commencing with the first September 15 following the first issuance of Securities pursuant to Section 301, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such September 15 with respect to any of the events specified in said Section 313(a) which may have occurred since the later of the immediately preceding September 15 and the date of this Indenture.

(b) The Trustee shall transmit the reports required by Section 313(b) of the Trust Indenture Act at the times specified therein.

(c) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

Section 704. Reports by Company.

The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 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;

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

(3) transmit within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section 704 as may be required by rules and regulations prescribed from time to time by the Commission.

## ARTICLE EIGHT

## CONSOLIDATION, MERGER AND SALES

## Section 801. Company May Consolidate, Etc., Only on Certain Terms.

Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Company with or into any other Person or Persons (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any conveyance, transfer or lease of the property of the Company as an entirety or substantially as an entirety, to any other Person (whether or not affiliated with the Company); provided, however, that:

(1) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a Corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by the successor Person and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, any premium and interest on and any Additional Amounts with respect to all the Securities and the performance of every other covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction, no event which, after notice or lapse of time, would become an Event of Default, shall have occurred and be continuing;

(3) either the Company or the successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

## Section 802. Successor Person Substituted for Company.

Upon any consolidation or merger or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease to another Person, the predecessor Person shall be released from all obligations and covenants under this Indenture, the Securities and the Coupons.

#### ARTICLE NINE

##### SUPPLEMENTAL INDENTURES

##### Section 901. Supplemental Indentures without Consent of Holders.

Without the consent of any Holders of Securities or Coupons, the Company (when authorized by or pursuant to a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company; or

(3) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of, any premium or interest on or any Additional Amounts with respect to Securities, to permit Registered Securities to be exchanged for Bearer Securities, to permit Bearer Securities to be exchanged for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided any such action shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto in any material respect; or

(4) to establish the form or terms of Securities of any series and any Coupons appertaining thereto as permitted by Sections 201 and 301; or

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 608; or

(6) to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto in any material respect; or

(7) to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Securities, as herein set forth; or

(8) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or

(9) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Article Four; provided that any such action shall not adversely affect the interests of any Holder of a Security of such series and any Coupons appertaining thereto or any other Security or Coupon in any material respect; or

(10) to secure the Securities pursuant to Section 1006 or otherwise;

(11) to amend or supplement any provision contained herein or in any supplemental indenture, provided that no such amendment or supplement shall materially adversely affect the interests of the Holders of any Securities then Outstanding; or

(12) to make provision with respect to the conversion rights of Holders of Convertible Securities pursuant to the requirements of Section 1606.

Section 902. Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or pursuant to a Company's Board Resolution), and the Trustee may enter into an Indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall

(1) change the Stated Maturity of the principal of, or any premium or installment of interest on or any Additional Amounts with respect to, any Security, or reduce the principal amount thereof or the rate of interest thereon or any Additional Amounts with respect thereto, or any premium payable upon the redemption thereof or otherwise, or change the obligation of the Company to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect the right of repayment at the option of any Holder as contemplated by Article Thirteen, or change the Place of Payment, Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security 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 Redemption Date or, in the case of repayment at the option of the Holder, on or after the date for repayment), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 1504 for quorum or voting,

(3) modify any of the provisions of this Section 902, or Section 513 or Section 1008, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without

the consent of the Holder of each Outstanding Security affected thereby, or

(4) adversely affect the right to convert any Convertible Security.

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

It shall not be necessary for any Act of Holders of Securities under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

#### Section 903. Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Article Six hereof) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder and of any Coupon appertaining thereto shall be bound thereby.

#### Section 905. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of

any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 906. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article Nine shall conform to the requirements of the Trust Indenture Act.

#### ARTICLE TEN

##### COVENANTS

Section 1001. Payment of Principal and any Premium, Interest and Additional Amounts.

The Company covenants and agrees for the benefit of the Holders of the Securities of each series that it will duly and punctually pay the principal of, any premium and interest on and any Additional Amounts with respect to the Securities of such series in accordance with the terms thereof, any Coupons appertaining thereto and this Indenture. Any interest due on any Bearer Security on or before the Maturity thereof, and any Additional Amounts payable with respect to such interest, shall be payable only upon presentation and surrender of the Coupons appertaining thereto for such interest as they severally mature.

Section 1002. Maintenance of Office or Agency.

The Company shall maintain in each Place of Payment for any series of Securities an Office or Agency where Securities of such series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange or, if applicable, conversion and where notices and demands to or upon the Company in respect of the Securities of such series relating thereto and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company shall maintain, subject to any laws or regulations applicable thereto, an Office or Agency in a Place of Payment for such series which is located outside the United States where Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment; provided, however, that if the Securities of



such series are listed on any stock exchange located outside the United States and such stock exchange shall so require, the Company shall maintain a Paying Agent in the required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such Office or Agency. If at any time the Company shall fail to maintain any such required Office or Agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment at the place specified for the purpose with respect to such Securities as provided in or pursuant to this Indenture, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in or pursuant to this Indenture, no payment of principal, premium, interest or Additional Amounts with respect to Bearer Securities shall be made at any Office or Agency in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, if amounts owing with respect to any Bearer Securities shall be payable in Dollars, payment of principal of, any premium or interest on and any Additional Amounts with respect to any such Security may be made at the Corporate Trust Office of the Trustee or any Office or Agency designated by the Company in The City of New York, if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for such purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other Offices or Agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an Office or Agency in each Place of Payment for Securities of any series for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other Office or Agency. Unless otherwise provided in or pursuant to this Indenture, the Company hereby designates as the Place of Payment for each series The City of New York, and initially appoints the Office or Agency of the Corporate Trust Office of the Trustee for such purpose. Pursuant to Section 301(9) of this Indenture, the Company may subsequently appoint a place or places in The City of New York where such Securities may be payable.

Section 1003. Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of, any premium or interest on or Additional Amounts with respect to any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum of money sufficient to pay the principal or any premium, interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure so to act.

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

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

(1) hold all sums held by it for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in or pursuant to this Indenture;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment of principal, any premium or interest on or any Additional Amounts with respect to the Securities of such series;

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

(4) comply with the provisions of the Trust Indenture Act

applicable to it as Paying Agent.

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

Except as otherwise provided herein or pursuant hereto, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Security of any series and remaining unclaimed for two years after such principal or any such premium or interest or any such Additional Amounts shall have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment for such series or to be mailed to Holders of Registered Securities of such series, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be later than two years after such principal and any premium or interest or Additional Amounts shall have become due and payable, any unclaimed balance of such money then remaining will be repaid to the Company.

#### Section 1004. Additional Amounts.

If any Securities of a series provide for the payment of Additional Amounts, the Company agrees to pay to the Holder of any such Security or any Coupon appertaining thereto Additional Amounts as provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or any Coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established hereby or pursuant hereto to the

extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provision hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise provided in or pursuant to this Indenture, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to such series of Securities (or if the Securities of such series shall not bear interest prior to Maturity, the first day on which a payment of principal is made), and at least 10 days prior to each date of payment of principal or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish to the Trustee and the principal Paying Agent or Paying Agents, if other than the Trustee, an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of or interest on the Securities of such series shall be made to Holders of Securities of such series or the Coupons appertaining thereto who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of such series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities or Coupons, and the Company agrees to pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense (including reasonable fees and expenses) reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section 1004.

Section 1005.      Limitation Upon Disposition of Voting Stock  
of Significant Subsidiaries.

So long as any of the Securities shall be Outstanding but subject to the provisions of Article Eight, the Company:

(a) will not, nor will it permit any Subsidiary to, sell, assign, transfer or otherwise dispose of any shares of, securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary (other than sales of directors qualifying shares), and will not permit a Significant Subsidiary to issue any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares

of, such Voting Stock (other than sales of directors qualifying shares) if, in each case, after giving effect to any such transaction and to the issuance of the maximum number of shares of Voting Stock of such Significant Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, such Significant Subsidiary would cease to be a Controlled Subsidiary, or

(b) will not permit a Significant Subsidiary to

(i) merge or consolidate with or into any other corporation, unless the surviving corporation is the Company or is, or upon consummation of the merger or consolidation will become, a Controlled Subsidiary; or

(ii) lease, sell or transfer all or substantially all of its properties and assets to any corporation or other Person, except to the Company or to a Controlled Subsidiary or a Person that, upon such lease, sale or transfer, will become a Controlled Subsidiary.

Notwithstanding the foregoing, any such sale, assignment or transfer of securities, any such merger or consolidation or any such lease, sale or transfer of properties and assets shall not be prohibited if required (i) by any law or any rule, regulation or order of any governmental agency or authority or (ii) as a condition imposed by any law or any rule, regulation or order of any governmental agency or authority to the acquisition by the Company, directly or indirectly, through purchase of stock or assets, merger, consolidation or otherwise, of any Person, provided that, after giving effect to such disposition and acquisition, (A) such Person will be a Controlled Subsidiary, and (B) the Consolidated Assets of the Company will be at least equal to the Consolidated Assets of the Company prior thereto; and nothing in this section shall prohibit the Company from the sale or transfer of assets pursuant to any securitization transaction.

#### Section 1006. Limitation on Creation of Liens.

So long as any of the Securities shall be outstanding, the Company will not, nor will it permit any Subsidiary to, create, assume, incur or suffer to be created, assumed or incurred or to exist any pledge, encumbrance or lien, as security for indebtedness for borrowed money, upon any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary, directly or indirectly, without making effective provision whereby the Securities of all series shall be equally and ratably secured with any and all such indebtedness if, treating such pledge, encumbrance or lien as a transfer of the shares

of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock subject thereto to the secured party and to the issuance of the maximum number of shares of Voting Stock of such Significant Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, such Significant Subsidiary would not continue to be a Controlled Subsidiary.

Section 1007. Corporate Existence.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of each Significant Subsidiary and its rights (charter and statutory) and franchises and those of each such Significant Subsidiary; provided, however, that neither the Company nor any Significant Subsidiary shall be required to preserve any such right or franchise if the Company or such Significant Subsidiary, as the case may be, shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 1008. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 1005, 1006 or 1007 with respect to the Securities of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1009. Company Statement as to Compliance; Notice of Certain Defaults.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, a written statement (which need not be contained in or accompanied by an Officers' Certificate) signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating that

(1) a review of the activities of the Company during such year

and of its performance under this Indenture has been made under his or her supervision, and

(2) to the best of his or her knowledge, based on such review, (a) the Company has complied with all the conditions and covenants imposed on it under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such condition or covenant, specifying each such default known to him or her and the nature and status thereof, and (b) no event has occurred and is continuing which is, or after notice or lapse of time or both would become, an Event of Default, or, if such an event has occurred and is continuing, specifying each such event known to him and the nature and status thereof.

[(b) The Company shall deliver to the Trustee, within five days after the occurrence thereof, written notice of any event which after notice or lapse of time or both would become an Event of Default pursuant to clause (4) of Section 501.]

## ARTICLE ELEVEN

### REDEMPTION OF SECURITIES

#### Section 1101. Applicability of Article.

Redemption of Securities of any series at the option of the Company as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant hereto) this Article.

#### Section 1102. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of the Securities of any series, with the same issue date, interest rate, Stated Maturity and other terms, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

#### Section 1103. Selection by Trustee of Securities to be Redeemed.

If less than all the Securities of any series with the same issue date, interest rate, Stated Maturity and other terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; provided, however, that no such partial redemption shall reduce the portion of the principal amount of a Registered Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto.

If any Convertible Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

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

#### Section 1104. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portion thereof.

Any notice that is mailed to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.



All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, and, if applicable, that interest thereon shall cease to accrue on and after said date,
- (6) the place or places where such Securities, together (in the case of Bearer Securities) with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto,
- (7) that the redemption is for a sinking fund, if such is the case,
- (8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all Coupons maturing subsequent to the date fixed for redemption or the amount of any such missing Coupon or Coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee and any Paying Agent is furnished,
- (9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on the Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be

made,

(10) the CUSIP number or the Euro-clear or the CEDEL reference numbers of such Securities, if any (or any other numbers used by a Depository to identify such Securities), and

(11) in the case of Convertible Securities, the Conversion Price then in effect, the date on which the right to convert the principal amount of the Securities or the portions thereof to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion,

A notice of redemption published in an Authorized Newspaper as contemplated by Section 106 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

#### Section 1105. Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on and Additional Amounts with respect thereto, all the Securities or portions thereof which are to be redeemed on that date.

If any Convertible Security or portion thereof called for redemption is converted pursuant to Article Sixteen, any money deposited with the Trustee or so segregated and held in trust for the redemption of such Security or portion thereof shall (subject to any right of the Holder of the Security on a Regular Record Date preceding such conversion to receive interest) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

#### Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such

Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with any accrued interest and Additional Amounts to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an Office or Agency located outside the United States except as otherwise provided in Section 1002), and provided, further, that installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that any interest or Additional Amounts represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such Security located outside of the United States except as otherwise provided in Section 1002.

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

#### Section 1107. Securities Redeemed in Part.

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee

shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Security in global form is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the U.S. Depository or other Depository for such Security in global form as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Security in global form in a denomination equal to and in exchange for the unredeemed portion of the principal of the Security in global form so surrendered.

Section 1108. Conversion Arrangements on Call for Redemption.

Notwithstanding anything to the contrary contained in this Indenture, in connection with any redemption of Convertible Securities of any series, the Company, by an agreement with one or more investment bankers or other purchasers, may arrange for such purchasers to purchase all such Convertible Securities called for redemption (the "Called Securities") which are either (i) surrendered for redemption or (ii) not duly surrendered for redemption or conversion prior to the close of business on the Redemption Date, and to convert the same into shares of Common Stock, by the purchasers' depositing with the Trustee (acting as Paying Agent with respect to the deposit of such amount and as conversion agent with respect to the conversion of such Called Securities), in trust for the Holders of the Called Securities, on or prior to the Redemption Date in the manner agreed to by the Company and such purchasers, an amount sufficient to pay the Redemption Price, payable by the Company on redemption of such Called Securities. In connection with any such arrangement for purchase and conversion, the Trustee as Paying Agent shall pay on or after the Redemption Date such amounts so deposited by the purchasers in exchange for Called Securities surrendered for redemption prior to the close of business on the Redemption Date and for all Called Securities surrendered after such Redemption Date. Notwithstanding anything to the contrary contained in this Article Eleven, the obligation of the Company to pay the Redemption Price of such Called Securities shall be satisfied and discharged to the extent such amount is so paid by such purchasers, provided, however, that nothing in this Section 1108 shall in any way relieve the Company of the obligation to pay such Redemption Price on all Called Securities to the extent such amount is not so paid by said purchasers. For all purposes of this Indenture, any Called Securities surrendered by the Holders for redemption, and any Called Securities not duly surrendered for redemption or conversion prior to the close of business on the Redemption Date, shall be deemed acquired by such purchasers from such Holders and surrendered by such purchasers for conversion and shall in all respects be deemed to have been converted, all as of immediately prior to the close of business on the

Redemption Date, subject to the deposit by the purchasers of the above amount as aforesaid. Nothing in this Section 1108 shall in any way limit the right of any Holder of a Security to convert his Security pursuant to the terms of this Indenture and of such Security at any time prior to the close of business on the Redemption Date applicable thereto.

## ARTICLE TWELVE

### SINKING FUNDS

#### Section 1201. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise permitted or required by any form of Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

#### Section 1202. Satisfaction of Sinking Fund Payments with Securities.

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Company), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities or which have been surrendered for conversion pursuant to Article Sixteen, provided that such series of Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the

Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such series for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that series purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

Section 1203. Redemption of Securities for Sinking Fund.

Not less than 45 days prior to each sinking fund payment date for any series of Securities (unless a shorter notice shall be satisfactory to the Trustee), the Company shall deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 40 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given not less than 30 nor more than 40 days prior to the sinking fund payment date in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN

REPAYMENT AT THE OPTION OF HOLDERS

## Section 1301. Applicability of Article.

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 1301, in connection with any repayment of Securities, the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the close of business on the repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

## ARTICLE FOURTEEN

## SECURITIES IN FOREIGN CURRENCIES

## Section 1401. Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary in the form of Security of any particular series, any amount in respect of any Security denominated in a Currency other than Dollars shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

## ARTICLE FIFTEEN

## MEETINGS OF HOLDERS OF SECURITIES

## Section 1501. Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

## Section 1502. Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place in The City of New York, or, if Securities of such series have been issued in whole or in part as Bearer Securities, in London or in such place outside the United States as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company (by or pursuant to a Board Resolution) or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in The City of New York, or, if Securities of such series are to be issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section 1502.

## Section 1503. Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such



series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 1504. Quorum; Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series, the Persons entitled to vote 66-2/3% in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; provided, however, that, except as limited by the proviso to Section 902, any resolution with respect to any consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly convened and at which a quorum is present as aforesaid only by the affirmative vote of the Holders of 66-2/3% in principal amount of the Outstanding Securities of that series; and provided, further, that, except as limited by the proviso to Section 902, any resolution with respect to any

request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section 1504 shall be binding on all the Holders of Securities of such series and the Coupons appertaining thereto, whether or not such Holders were present or represented at the meeting.

Section 1505. Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series 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 deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) 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 Holders of Securities as provided in Section 1502(b), in which case the Company or the Holders of Securities of the series 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 vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting, each Holder of a Security of such series or proxy

shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any 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, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 1506. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series 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 triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series 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 given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

## ARTICLE SIXTEEN

## CONVERSION

## Section 1601. Conversion Privilege.

Subject to and upon compliance with the provisions of this Article Sixteen and the terms of the Convertible Securities of the series proposed to be converted, at the option of the Holder, any Convertible Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple thereof, may be converted into shares of Common Stock, as said shares shall be constituted at the Date of Conversion, at the Conversion Price for such Convertible Securities of such series in effect at the Date of Conversion.

## Section 1602. Manner of Exercise of Conversion Privilege.

In order to exercise the conversion privilege, the Holder of any Convertible Security to be converted shall surrender such Convertible Security to the Company at its office or agency in The City of New York, together with the conversion notice in the form provided on the Securities (or separate written notice) duly executed, and, if so required by the Company, accompanied by instruments of transfer, in form satisfactory to the Company and to the Trustee, duly executed by the Holder or by his duly authorized attorney in writing. Any Registered Convertible Security so surrendered during the period from the close of business on the Regular Record Date preceding an Interest Payment Date for such Registered Convertible Security to the opening of business on such Interest Payment Date shall (unless any such Registered Convertible Security or the portion thereof being converted shall have been called for redemption on a Redemption Date during such period, in which event no interest shall be payable with respect to such Registered Convertible Security or portion thereof, as the case may be, following such Redemption Date) also be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Registered Convertible Security then being converted; provided, however, that no such payment need be made if there shall exist, at the time of conversion, a default in the payment of interest on the Convertible Securities of such series. Except as provided in the immediately preceding sentence, no adjustment shall be made for interest accrued on any Convertible Security that shall be converted or for dividends on any shares of Common Stock that shall be delivered upon the conversion of such Convertible Securities. The funds so delivered to such office or agency shall be paid to the Company on or after such Interest Payment Date, unless the Company shall default in the payment of the interest due on such Interest Payment Date, in which event such

funds shall be repaid to the Person who delivered the same. As promptly as practicable after the surrender of any Convertible Security for conversion as aforesaid, the Company shall deliver at said office or agency to such Holder, or on his written order, a certificate or certificates for the number of full shares deliverable upon the conversion of such Convertible Security or portion thereof and a check or cash in respect of any fraction of a share of Common Stock otherwise deliverable upon such conversion, all as provided in this Article Sixteen, together with a Convertible Security or Convertible Securities of the same series in principal amount equal to the unconverted and unredeemed portion, if any, of the Convertible Security so converted in accordance with Section 305 hereof. Such conversion shall be deemed to have been effected on the date on which such notice shall have been received at said office or agency and such Convertible Security shall have been surrendered as aforesaid, and the Person or Persons in whose name or names any certificate or certificates, for shares of Common Stock shall be deliverable upon such conversion shall be deemed to have become on said date the Holder or Holders of record of the shares represented thereby, provided, however, that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificates are to be delivered as the record Holder or Holders thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date of such surrender.

#### Section 1603. Cash Adjustment Upon Conversion.

The Company shall not be required to deliver fractions of shares of Common Stock upon conversions of Convertible Securities. If more than one Convertible Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be deliverable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities so surrendered. If any fractional interest in a share of Common Stock would be deliverable upon the conversion of any Convertible Security or Securities, the Company shall make an adjustment therefor in cash equal to the current market value of such fractional interest computed to the nearest cent either on the basis of the last reported sale price regular way of the Common Stock on the New York Exchange (or, if not listed on the New York Exchange, then on such other exchange on which the shares of Common Stock are listed as the Company may designate) on the last Business Day prior to the Date of Conversion or, if there shall not have been a sale on such last Business Day, on the basis of the average of the bid and asked quotations therefor on such exchange on such last Business Day or, if the Common Stock shall not then be listed on any exchange, at the highest bid quotation in the over-the-counter market on such last Business Day as reported by the National Association of Securities Dealers through

NASDAQ, its automated system for reporting quotes, or its successor or such other generally accepted source of publicly reported bid and asked quotations as the Company may reasonably designate.

Section 1604. Conversion Price.

The Conversion Price applicable to any series of Convertible Securities shall be the initial Conversion Price set forth on the Officers' Certificate or supplemental indenture establishing such series adjusted as provided in this Article Sixteen.

Section 1605. Adjustment of Conversion Price.

The Conversion Price applicable to any series of Convertible Securities shall be adjusted from time to time as follows:

(a) In case the Company shall, at any time or from time to time while the Securities of any series are Outstanding, (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price for such series in effect immediately prior thereto shall be adjusted so that the Holder of any Security of such series thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock or other securities of the Company which he would have owned or have been entitled to receive after the happening of any of the events described above, had such Convertible Security of such series been converted immediately prior to the happening of such event. An adjustment made pursuant to this subdivision (a) shall become effective, in the case of a dividend, on the payment date retroactively to immediately after the opening of business on the day following the record date for the determination of stockholders entitled to receive such dividend, subject to the provisions of paragraph (g) of this Section 1605, and shall become effective in the case of a subdivision or combination immediately after the opening of business on the day following the day when such subdivision or combination, as the case may be, becomes effective.

(b) In case the Company shall, at any time or from time to time while the Convertible Securities of any series are Outstanding, issue rights or warrants to all holders of its shares of Common Stock entitling them (for a period expiring within 45 days of the record date mentioned below) to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share of Common Stock (as defined in paragraph (d) below) at

such record date, the Conversion Price of any series of Convertible Securities in effect immediately prior to the issuance of such rights or warrants shall be adjusted as follows: the number of shares of Common Stock into which \$1,000 principal amount of Convertible Securities of such series was theretofore convertible shall be multiplied by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding immediately prior to such record date plus the number of additional shares of Common Stock offered for subscription or purchase, and of which the denominator shall be the number of shares of Common Stock outstanding immediately prior to such record date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such current market price; and the Conversion Price for such series of Convertible Securities shall be adjusted by dividing \$1,000 by the new number of shares into which \$1,000 principal amount of Securities of such series shall be convertible as aforesaid. Such adjustment shall become effective on the date of such issuance retroactively to immediately after the opening of business on the day following the record date for the determination of shareholders entitled to receive such rights or warrants, subject to the provisions of paragraph (g) of this Section 1605. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such current market price, and in determining the aggregate offering price of such shares, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case the Company shall, at any time from time to time while the Convertible Securities of any series are Outstanding, distribute to all holders of shares of its Common Stock evidences of its indebtedness or securities or assets (excluding cash dividends or cash distributions payable out of consolidated net earnings or retained earnings) or rights or warrants to subscribe for shares of Common Stock at a price per share less than the current market price per share of Common Stock, determined in the manner set forth in paragraph (d) below, but excluding rights or warrants referred to in paragraph (b) above, the Conversion Price for such series of Convertible Securities in effect immediately prior to such distribution shall be adjusted by multiplying the number of shares of Common Stock into which \$1,000 principal amount of Convertible Securities of such series of Convertible Securities was theretofore convertible by a fraction, of which the numerator shall be the current market price per share of Common Stock (as defined in paragraph (d) below) on the record date for such distribution, and of which the denominator shall be such current market price per share of the Common Stock, less the then fair market value (as determined by

the Board of Directors of the Company, whose determination shall be conclusive) of the portion of such evidences of indebtedness, securities or assets or of such subscription rights or warrants so distributed applicable to one share of Common Stock; and the Conversion Price for such series of Convertible Securities shall be adjusted by dividing \$1,000 by the new number of shares into which \$1,000 principal amount of Convertible Securities of such series shall be convertible as aforesaid. Such adjustment shall become effective on the date of such distribution retroactively to immediately after the opening of business on the day following the record date for the determination of shareholders entitled to receive such distribution, subject to the provisions of paragraph (g) of this Section 1605. For the purposes of this paragraph (c) consolidated net earnings or retained earnings shall be computed by adding thereto all charges against retained earnings on account of dividends paid in shares of Common Stock in respect of which the Conversion Price has been adjusted, all as determined by Independent Public Accountants, whose determination shall be conclusive.

(d) For the purpose of any computation under paragraphs (b) and (c) above, the current market price per share of Common Stock at any date shall be deemed to be the average of the market values of the shares of Common Stock for the ten consecutive Business Days immediately preceding the day in question. The market value of the Common Stock for each day shall be determined as provided in Section 1603 hereof.

(e) The Company may make such reductions in the Conversion Price for any series of Convertible Securities, in addition to those required by paragraphs (a), (b) and (c) of this Section as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients.

(f) Except as herein otherwise provided, no adjustment in the Conversion Price for any series of Convertible Securities shall be made by reason of the issuance, in exchange for cash, property or services, of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or carrying the right to purchase any of the foregoing.

(g) If the Company shall take a record of the holders of its shares of Common Stock for the purpose of entitling them to receive any dividend or any subscription or purchase rights or any distribution and shall, thereafter and before the distribution to shareholders of any such dividend, subscription or purchase rights or distribution, legally abandon its plan to pay or deliver such dividend, subscription or purchase rights or distribution, then no



adjustment of the Conversion Price for any series of Convertible Securities shall be required by reason of the taking of such record.

(h) No adjustment in the Conversion Price for any series of Convertible Securities shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this paragraph (h) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article Seventeen shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(i) Whenever the Conversion Price for any series of Convertible Securities is adjusted as herein provided, the Company shall (i) forthwith place on file at the Principal Office of the Trustee an Officers' Certificate showing in detail the facts requiring such adjustment and the Conversion Price after such adjustment and shall exhibit the same from time to time to any Holder of Convertible Securities of such series desiring an inspection thereof, and (ii) cause a notice stating that such adjustment has been effected and the adjusted Conversion Price to be mailed to the Holders of Registered Convertible Securities of such series at their last addresses as they shall appear on the Security Register.

(j) The Company may delete, modify or vary any of the provisions applicable to conversion of the Convertible Securities of any series, or may add new provisions applicable thereto, all as may be contained in the Board Resolutions and Officers' Certificate or supplemental indenture establishing such series.

Section 1606. Effect of Reclassifications, Consolidations, Mergers or Sales on Conversion Privilege.

In case of any reclassification or change of outstanding shares of the class of Common Stock issuable upon conversion of the Convertible Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), or in case of any merger or consolidation of the Company with one or more other corporations (other than a merger or consolidation in which the Company is the continuing corporation and which does not result in any reclassification or change of outstanding shares of Common Stock issuable upon conversion of the Securities), or in case of the merger of the Company into another corporation, or in case of any sale or conveyance to another corporation of the property of the Company as an entirety or substantially as an entirety, the Holders

of Convertible Securities of each series then Outstanding shall have the right to convert such Convertible Securities into the kind and amount of shares of capital stock or other securities and property, including cash, receivable upon such reclassifications change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock into which such Convertible Securities might have been converted immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. In any such case the Company, or such successor or purchasing corporation, as the case may be, shall execute with the Trustee one or more supplemental indentures (which shall conform to the Trust Indenture Act of 1939 as in force at the date of the execution of such supplemental indenture) containing provisions to the effect set forth above in this Section 1606 and providing further for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Sixteen; and any such adjustment which shall be approved by the Board of Directors and set forth in such supplemental indenture or supplemental indentures shall be conclusive for all purposes of this Section, and the Trustee shall not be under any responsibility to determine the correctness of any provision contained in such supplemental indenture or supplemental indentures relating to either the kind or amount of shares of stock or securities or property receivable by Holders of Securities of any series upon the conversion of their Convertible Securities after any such reclassification, change, consolidation, merger, sale or conveyance.

The above provisions of this Section 1606 shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales and conveyances.

#### Section 1607. Taxes on Conversions.

The issue of stock certificates on conversions of Convertible Securities shall be made without charge to the converting Holder of Convertible Securities for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the Holder of any Registered Convertible Security converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

#### Section 1608. Company to Reserve Common Stock.

The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued shares or its issued shares held in its treasury,

or both, for the purpose of effecting the conversion of the Securities, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all Outstanding Securities.

If any shares of Common Stock reserved or to be reserved for the purpose of conversion of Securities hereunder require registration with or approval of any governmental authority under any Federal or State law before such shares may be validly delivered upon conversion, then the Company covenants that it will in good faith and as expeditiously as possible endeavor to secure registration or approval, as the case may be.

The Company covenants that all shares of Common Stock which may be delivered upon conversion of Convertible Securities shall upon delivery be fully paid and nonassessable by the Company and free from all taxes, liens and charges with respect to the issue or delivery thereof.

Section 1609. Disclaimer by Trustee of Responsibility for Certain Matters.

Neither the Trustee nor any conversion agent shall at any time be under any duty or responsibility to any Holder of Convertible Securities of any series to determine whether any facts exist which may require any adjustment of the Conversion Price for such series, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same, subject, however, to the provisions of Sections 315(a) through 315(b) of the Trust Indenture Act. Neither the Trustee nor any conversion agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property which may at any time be issued or delivered upon the conversion of any Convertible Security; and neither of them makes any representation with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or, subject to Sections 315(a) through 315(b) of the Trust Indenture Act, to comply with any of the covenants of the Company contained in this Article Sixteen.

Section 1610. Company to Give Notice of Certain Events.

In the event

(A) that the Company shall pay any dividend or make any distribution to the holders of shares of Common Stock otherwise than in cash charged against consolidated net earnings or retained earnings of the Company and its consolidated subsidiaries or in Common Stock; or

(B) that the Company shall offer for subscription or purchase, pro rata, to the holders of shares of Common Stock any additional shares of stock of any class or any securities convertible into or exchangeable for stock of any class; or

(C) of any reclassification or change of outstanding shares of the class of Common Stock issuable upon the conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), or of any merger or consolidation of the Company with, or merger of the Company into, another corporation (other than a merger or consolidation in which the Company is the continuing corporation and which does not result in reclassification or change of outstanding shares of Common Stock issuable upon conversion of the Securities), or of any sale or conveyance to another corporation of the property of the Company as an entirety or substantially as an entirety;

then, and in any one or more of such events, the Company will give to the Trustee and each conversion agent written notice thereof at least fifteen days prior to (i) the record date fixed with respect to any of the events specified in (A) and (B) above, and (ii) the effective date of any of the events specified in (C) above; and shall mail in the case of Registered Securities, promptly a copy of such notice to the Holders thereof at their last addresses as they shall appear upon the Security Register or, in the case of Bearer Securities, cause such notice to be published in an Authorized Newspaper. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

#### ARTICLE SEVENTEEN

##### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 1701. Indenture and Securities Solely Corporate Obligations.

No recourse for the payment of the principal of or premium, if any, or interest or Additional Amounts on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or, in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through 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; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Securities.

\* \* \* \* \*

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed, all as of the day and year first above written.

[SEAL] Capital One Financial Corporation

Attest:

-----

By -----

    Name:

    Title:

[SEAL] -----, as

Trustee

Attest:

-----

By -----

    Name:

    Title:

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STATE OF \_\_\_\_\_ )  
SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 1996, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is a \_\_\_\_\_ of Capital One Financial Corporation, a Delaware corporation, one of the persons described in and who executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such Corporation's seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto by like authority.

-----  
Notary Public

[NOTARIAL SEAL]

On the \_\_\_\_ day of \_\_\_\_\_, 199, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is a \_\_\_\_\_ of \_\_\_\_\_, a national banking association organized and existing under the laws of the United States, one of the persons described in and who executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such Corporation's seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto by like authority.

Notary Public

[NOTARIAL SEAL]



Capital One Financial Corporation,  
Issuer

to

Trustee

-----  
SUBORDINATED INDENTURE

Dated as of \_\_\_\_\_, 1996

Subordinated Debt Securities

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

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including 317 are a part of and govern every qualified indenture, whether or not physically contained herein.

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## IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

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SUBORDINATED INDENTURE, dated as of \_\_\_\_\_ (the "Indenture"), between Capital One Financial Corporation, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), having its corporate office located at 2980 Fairview Park Drive, Falls Church, Virginia 22042, and \_\_\_\_\_, a national banking association duly organized and existing under the laws of the United States (hereinafter called the "Trustee"), having its Corporate Trust Office located at \_\_\_\_\_.

#### RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured subordinated debentures, notes or other evidences of indebtedness (hereinafter called the "Securities"), unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, to be issued in one or more series and to have such other provisions as shall be fixed as hereinafter provided.

The Company has duly authorized the execution and delivery of this Indenture. All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

## ARTICLE ONE

## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

## Section 101. Definitions.

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

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

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

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

(4) the words "herein", "hereof", "hereto" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms used principally in certain Articles hereof are defined in those Articles.

"Act", when used with respect to any Holders, has the meaning specified in Section 104.

"Additional Amounts" means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified therein and which are owing to such Holders.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with

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

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 610 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Authorized Newspaper" means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

"Bearer Security" means any Security in the form established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means the board of directors of the Company or any committee of that board duly authorized to act generally or in any particular respect for the Company hereunder.

"Board Resolution" means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or any duly authorized committee thereof and to be in full force and effect on the date of such certification, delivered to the Trustee.

"Business Day", with respect to any Place of Payment or other location, means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a Legal Holiday in such Place of Payment or other location.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934 or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means all shares now or hereafter authorized of any class of common stock of the Company presently authorized and stock of any other class into which such shares may hereafter have been changed.

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

"Company Request" and "Company Order" mean, respectively, a written request or order, as the case may be, signed in the name of the Company by the Chairman of the Board of Directors and Chief Executive Officer, a Vice Chairman, the President and Chief Operating Officer, a Senior Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

"Consolidated Assets" means all assets owned directly by the Company or indirectly by the Company through any Subsidiary and reflected on the Company's consolidated balance sheet prepared in accordance with generally accepted accounting principles.

"Controlled Subsidiary" means each Significant Subsidiary if at least 80% of the outstanding shares of its Voting Stock is at the time owned by the Company or by one or more Controlled Subsidiaries of the Company or by the Company and one or more Controlled Subsidiaries.

"Conversion Price" means the price per share of Common Stock from time to time in effect at which any Convertible Security may be converted into Common Stock as determined by or pursuant to the terms of this Indenture.

"Convertible Security" or "Convertible Securities" means any Security or Securities, as the case may be, which are by their terms convertible into Common Stock.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of original execution of this Indenture is located at the address specified in the first paragraph of this instrument.

"Corporation" includes corporations and, except for purposes of Article Eight, associations, companies and business trusts.

"Coupon" means any interest coupon appertaining to a Bearer

Security.

"Currency" or "Money", with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means the unit or units of legal tender for the payment of public and private debts (or any composite thereof) in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof, means Dollars.

"Currency Indexed Note" means any Security with the amount of principal payments determined by reference to an index Currency.

"Date of Conversion" with respect to any Convertible Security or portion thereof to be converted, means the date on which such Convertible Security shall be surrendered for conversion and notice given in accordance with the provisions of Article Seventeen.

"Defaulted Interest" has the meaning specified in Section 307.

"Depository" or "U.S. Depository" means, with respect to any Security issuable or issued in the form of one or more global Securities, the Person designated as Depository or US. Depository by the Company in or pursuant to this Indenture, which Person must be, to the extent required by applicable law or regulation, a clearing agency registered under the Securities Exchange Act of 1934, as amended, and, if so provided with respect to any Security, any successor to such Person. If at any time there is more than one such Person, "Depository" or "U.S. Depository" shall mean, with respect to any Securities, the qualifying entity which has been appointed with respect to such Securities.

"Dollars" or "\$" means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

"Event of Default" has the meaning specified in Section 501.

"Government Obligations", with respect to any Security, means (i) direct obligations of the government or governments which issued the Currency in which the principal of or any premium or interest on such Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an

agency or instrumentality of such government or governments, in each case where the payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by such government or governments, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

"Holder", in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register and, in the case of any Bearer Security, means the bearer thereof and, in the case of any Coupon, means the bearer thereof.

"Indenture" means this instrument as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security and any Coupon appertaining thereto established pursuant to Section 301 (as such terms and provisions may be amended pursuant to the applicable provisions hereof).

"Independent Public Accountants" means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Securities or the Coupons, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants. Such accountants or firm shall be entitled to rely upon any Opinion of Counsel as to the interpretation of any legal matters relating to the Indenture or certificates required to be provided hereunder.

"Indexed Security" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity and/or interest to be paid thereon may be determined by reference to the exchange rate of one or more specified currencies relative to an index or one or more equity or other indices and/or formulae or the price of one or more specified commodities or by such other methods or formulae

as may be determined in accordance with this Indenture.

"Interest", with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity, and, when used with respect to a Security which provides for payment of Additional Amounts pursuant to Section 1004, includes such Additional Amounts.

"Interest Payment Date", with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Legal Holiday", with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions or trust companies in such Place of Payment or other location are not authorized or obligated to be open.

"Maturity", with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture, whether at the Stated Maturity or by declaration of acceleration, notice of redemption, notice of option to elect repayment or otherwise, and includes Redemption Date.

"Office or Agency", with respect to any Securities, means an office or agency of the Company maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other office or agency of the Company maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such office or agency, the Corporate Trust Office of the Trustee.

"Officers' Certificate" means a certificate signed by the Chairman of the Board and Chief Executive Officer, a Vice Chairman, the President and Chief Operating Officer, any Senior Vice President, the Treasurer, any Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that complies with the requirements of Section 314(e) of the Trust Indenture Act.

"Original Issue Discount Security" means a Security issued pursuant to this Indenture which provides for declaration of an amount less than the principal face



amount thereof to be due and payable upon acceleration pursuant to Section 502.

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

- (i) any such Security theretofore cancelled by the Trustee or the Security Registrar or delivered to the Trustee or the Security Registrar for cancellation;
- (ii) any such Security or portions thereof for whose payment at the Maturity thereof money in the necessary amount has been theretofore deposited pursuant hereto with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (iii) any such Security with respect to which the Company has effected defeasance pursuant to Section 402 hereof;
- (iv) any such Security which has been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Company; AND
- (v) Convertible Securities converted into Common Stock in accordance with Article Seventeen hereof;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be declared (or shall have been declared to be) due and payable upon a declaration of

acceleration thereof pursuant to Section 502 at the time of such determination, (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided in or pursuant to this Indenture, (iii) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the U.S. dollar equivalent based on the applicable exchange rate or rates at the time of sale (or in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined in (ii)); and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee (A) the pledgee's right so to act with respect to such Securities and (B) that the pledgee is not the Company or any other obligor upon the Securities or any Coupons appertaining thereto or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to any Security or any Coupon on behalf of the Company.

"Person" means any individual, Corporation, partnership, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security is payable as provided in or pursuant to this Indenture.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or any Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same debt as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

"Redemption Date", with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture.

"Registered Security" means any Security established pursuant to Section 201 which is registered in the Security Register.

"Regular Record Date" for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture as the "Regular Record Date".

"Responsible Officer" means an officer of the Trustee assigned to the Corporate Trust Office, including any Vice President, any trust officer or any other officer performing functions similar to those performed by the persons who at the time shall be such officers, and any other officer of the Trustee to whom a matter is referred because of his knowledge of and familiarity with the particular subject.

"Security" or "Securities" means any Security or Securities, as the case may be, authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities", with respect to any such Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Senior Indebtedness" means the principal of and premium if any, and interest on the following, whether outstanding at the date hereof or thereafter incurred or created:

(a) indebtedness of the Company for money borrowed (including any indebtedness secured by a mortgage or other lien which is (i) given to secure all or part of the purchase price of property subject thereto, whether given to the vendor of such property or to another or (ii) existing on property at the time of acquisition thereof) evidenced by notes or other written obligations, except such indebtedness as is by its terms expressly stated to be not superior in right of payment to the Securities or to rank pari passu or is identified in a Board

Resolution or any indenture supplemental hereto as not superior in right of payment or to rank pari passu with the Securities;

(b) indebtedness of the Company evidenced by notes, debentures, bonds or other securities sold by the Company for money;

(c) indebtedness of others of the kinds described in either of the preceding clauses (a) or (b) assumed by or guaranteed in any manner by the Company or in effect guaranteed by the Company through an agreement to purchase, contingent or otherwise; and

(d) renewals, extensions or refundings of indebtedness of the kinds described in any of the preceding clauses (a), (b) and (c)

unless, in the case of any particular indebtedness, renewal, extension or refunding, the instrument creating or evidencing the same or the assumption or guarantee of the same expressly provides that such indebtedness, renewal, extension or refunding is not superior in right of payment to the Securities.

"Significant Subsidiary" means any Subsidiary of the Company the Consolidated Assets of which constitute 20% or more of the Company's Consolidated Assets.

"Special Record Date" for the payment of any Defaulted Interest on any Registered Security means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity", with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture as the fixed date on which the principal of such Security or such installment of principal or interest is or such Additional Amounts are due and payable.

"Subsidiary" means any Corporation of which at the time of determination the Company or one or more Subsidiaries owns or controls directly or indirectly more than 50% of the shares of Voting Stock.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as

the case may be.

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

"United States", except as otherwise provided herein or in any Security, means the United States of America (including the states thereof and the District of Columbia), its territories and possessions and other areas subject to its jurisdiction.

"United States Alien", except as otherwise provided in or pursuant to this Indenture, means any Person who, for United States Federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States Federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

"Vice President", when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "Vice President".

"Voting Stock" means stock of a Corporation of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such Corporation provided that, for the purposes hereof, stock which carries only the right to vote conditionally on the happening of an event shall not be considered voting stock whether or not such event shall have happened.

#### Section 102. Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is

specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Section 103. Form of Documents Delivered to Trustee.

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

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

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

Section 104. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in

accordance with the provisions of Article Fifteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, a Holder, including a U.S. Depository that is a Holder of a global Security, may make, give or take, by a proxy, or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders, and a U.S. Depository that is a Holder of a global Security may provide its proxy or proxies to the beneficial owners of interests in any such global Security through such U.S. Depository's standing instructions and customary practices.

The Trustee shall fix a record date for the purpose of determining the Persons who are beneficial owners of interest in any permanent global Security held by a U.S. Depository entitled under the procedures of such U.S. Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 104.

(c) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved by the Security Register.

(d) The ownership, principal amount and serial numbers of Bearer Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depositary, by any trust company, bank, banker or other depositary reasonably acceptable to the Company, wherever situated, if such certificate shall be deemed by the Company and the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership, principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of the commencement and the date of the termination of holding the same may also be proved in any other manner which the Company and the Trustee deems sufficient.

(e) If the Company shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may at its option (but is not obligated to), by Board Resolutions, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.



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

Section 105. Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

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

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

Section 106. Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such Notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if such Securities are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the

Company shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

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

#### Section 107. Language of Notices.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

#### Section 108. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with any duties under

any required provision of the Trust Indenture Act imposed hereon by Section 318(c) thereof, such required provision shall control.

Section 109. Effect of Headings and Table of Contents.

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

Section 110. Successors and Assigns.

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

Section 111. Separability Clause.

In case any provision in this Indenture, any Security or any Coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 112. Benefits of Indenture.

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

Section 113. Governing Law.

This Indenture, the Securities and any Coupons shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made or instruments entered into and, in each case, performed in said state.

Section 114. Legal Holidays

In any case where any Interest Payment Date, Stated Maturity or Maturity of any Security, or the last date on which a Holder has the right to convert his Securities shall be a Legal Holiday at any Place of Payment, then (notwithstanding any other provision of this Indenture, any Security or any Coupon other than a provision in any Security or Coupon that specifically states that such provision shall apply in lieu of this

Section 114) payment or conversion of the Securities need not be made at such Place of Payment on such date, but may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or at the Stated Maturity or Maturity, or on the last such date for conversion, and no interest shall accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date or Stated Maturity or Maturity, or the last such date for conversion, as the case may be.

## ARTICLE TWO

### SECURITIES FORMS

#### Section 201. Forms Generally.

Each Registered Security, Bearer Security, Coupon and temporary global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officers executing such Security or Coupon as evidenced by their execution of such Security or Coupon.

Unless otherwise provided in or pursuant to this Indenture, the Securities shall be issuable in registered form without Coupons.

Definitive Securities and definitive Coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers of the Company executing such Securities or Coupons, as evidenced by their execution of such Securities or Coupons.

#### Section 202. Form of Trustee's Certificate of Authentication.

Subject to Section 610, the Trustee's certificate of authentication shall be in substantially the following form:

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

, as Trustee

By

Authorized Officer

## Section 203. Securities in Global Form.

If Securities of a series shall be issuable in global form, any such Security may provide that it or any number of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered pursuant to Section 303 or 304 with respect thereto. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Company with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officers' Certificate and need not be accompanied by an Opinion of Counsel.

## ARTICLE THREE

## THE SECURITIES

## Section 301. Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series. The Securities shall be subordinated in right of payment to Senior Indebtedness as provided in Article Sixteen.

With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto,

(1) the title of such Securities and the series in which such Securities shall be included;

(2) any limit upon the aggregate principal amount of the Securities of such title or the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 905, 1107 or 1702 or the terms of such Securities);

(3) whether such Securities are to be issuable as Registered Securities, as Bearer Securities or alternatively as Bearer Securities and Registered Securities, and whether the Bearer Securities are to be issuable with Coupons, without Coupons or both, and any restrictions applicable to the offer, sale, delivery or conversion of the Bearer Securities and the terms, if any, upon which Bearer Securities may be exchanged for Registered Securities and vice versa;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether beneficial owners of interests in any such global Security may exchange such interest for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 305, and (ii) the name of the Depository or the U.S. Depository, as the case may be, with respect to any global Security;

(5) if any of such Securities are to be issuable as Bearer Securities or in global form, the date as of which any such Bearer Security or global Security shall be dated (if other than the date of original issuance of the first of such Securities to be issued);

(6) if any of such Securities are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form payable in respect of an Interest Payment Date therefor prior to the exchange, if any, of such temporary Bearer Security for definitive

Securities shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(7) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal of such Securities is payable;

(8) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, whether and under what circumstances Additional Amounts on such Securities or any of them shall be payable, and the basis upon which interest shall be calculated;

(9) if in addition to or other than The City of New York, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be surrendered for registration of transfer, any of such Securities may be surrendered for exchange or conversion and notices or demands to or upon the Company in respect of such Securities and this Indenture may be served;

(10) whether any of such Securities are to be redeemable at the option of the Company and, if so, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Company;

(11) whether the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or at the option of any Holder thereof and, if so, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(12) the denominations in which any of such Securities that are

Registered Securities shall be issuable if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any of such Securities that are Bearer Securities shall be issuable if other than the denomination of \$5,000;

(13) if other than the principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 501 or the method by which such portion is to be determined;

(14) if other than Dollars, the Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable;

(15) the Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Securities shall be payable, if other than the currency of the United States and the time and manner of determining the exchange rate between the Currency in which such Securities are payable and the Currency in which such Securities or any of them are so payable;

(16) whether the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(17) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to any of such Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(18) the applicability, if any, of Section 402 to any of such Securities and any provisions in modification of, in addition to or in lieu of any of the provisions of Section 402;

(19) whether the principal of (and premium, if any) or interest (including Additional Amounts), if any, on the Securities of the series are to be payable, at the election of the Company or any Holder thereof or otherwise, in a



currency or currencies, currency unit or units or composite currency or currencies other than that in which such Securities or any of them are denominated or stated to be payable, the period or periods within which, and the other terms and conditions upon which, such election, if any, may be made, and the time and manner of determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities or any of them are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities or any of them are to be so payable;

(20) if any of such Securities are to be issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(21) if there is more than one Trustee, the identity of the Trustee and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities;

(22) whether Securities of the series are to be Convertible Securities and, if so, the initial Conversion Price applicable thereto, the period or periods within which the conversion privilege may be exercised, the class of Common Stock into which such Convertible Securities may be converted and any additions, deletions, modifications or variations to the provisions of Article Seventeen hereof applicable thereto;

(23) any other terms of such Securities (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and all Coupons, if any, appertaining to Bearer Securities of such series shall be substantially identical except as to Currency of payments due thereunder, denomination and the rate or rates of interest, if any, and Maturity, the date from which interest, if any, shall accrue and except as may otherwise be provided by the Company in or pursuant to the Board Resolution and set forth in the Officers' Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. All Securities of any one series need not be issued at the same time and, unless otherwise so provided by the Company, a series may be reopened for issuances of additional Securities of such series or to establish additional terms of such series of Securities.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to a Board Resolution, the Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of such series.

Section 302. Currency; Denominations.

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without Coupons in denominations of \$1,000 and any integral multiple thereof, and the Bearer Securities denominated in Dollars shall be issuable in the denomination of \$5,000. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 303. Execution, Authentication, Delivery and Dating.

Securities shall be executed on behalf of the Company by its Chairman of the Board and Chief Executive Officer, its President and Chief Operating Officer, the Chief Financial Officer, the Treasurer and any Assistant Treasurer or one of its Senior Vice Presidents under its corporate seal reproduced thereon and attested by its Corporate Secretary or one of its Assistant Secretaries. Coupons shall be executed on behalf of the Company by the Chief Financial Officer, the Treasurer or any Assistant Treasurer of the Company. The signature of any of these officers on the Securities or any Coupons appertaining thereto may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities, together with any Coupons appertaining thereto, executed by the Company, to the Trustee for authentication, together with the Board Resolution and Officers' Certificate or supplemental indenture with respect to such Securities referred to in Section 301 and a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order and subject to the provisions hereof shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional

responsibilities under this Indenture in relation to such Securities and any Coupons appertaining thereto, the Trustee shall be entitled to receive, and (subject to Article Six hereof) shall be fully protected in relying upon an Opinion of Counsel substantially to the effect that:

(a) the form or forms and terms of such Securities and Coupons, if any, have been established in conformity with the provisions of this Indenture;

(b) that such Securities, and Coupons, when completed by appropriate insertion and executed and delivered by the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and except further as enforcement thereof may be limited by (A) requirements that a claim with respect to any securities denominated other than in Dollars (or a foreign currency or foreign currency unit judgment in respect of such claim) be converted into Dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments in foreign currency or currency units or payments outside the United States; and will entitle the Holders thereof to the benefits of this Indenture; such Opinion of Counsel need express no opinion as to the availability of equitable remedies;

(c) all legal requirements in respect of the execution and delivery by the Company of such Securities and Coupons, if any, have been complied with; and

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

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officers' Certificate at the time of issuance of each Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Security of such series. After any such first delivery, any separate request by the Company that

the Trustee authenticate Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Indenture relating to authentication and delivery of such Securities continue to have been complied with.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any temporary Bearer Security in global form shall be dated as of the date specified in or pursuant to this Indenture.

No Security or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 610 executed by or on behalf of the Trustee by the manual signature of one of its authorized officers or by an Authenticating Agent. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as permitted by Section 306 or 307, the Trustee shall not authenticate and deliver any Bearer Security unless all Coupons appertaining thereto then matured have been detached and cancelled.

#### Section 304. Temporary Securities.

Pending the preparation of definitive Securities, the Company may execute and deliver to the Trustee and, upon Company Order, the Trustee shall authenticate and deliver, in the manner provided in Section 303, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form or, if authorized in or pursuant to this Indenture, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Company executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be

exchanged in accordance with the provisions thereof, if temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Upon surrender for cancellation of any one or more temporary Securities (accompanied by any unmatured Coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and containing identical terms and provisions; provided, however, that no definitive Bearer Security, except as provided in or pursuant to this Indenture, shall be delivered in exchange for a temporary Registered Security; and provided, further, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in or pursuant to this Indenture. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

#### Section 305. Registration, Transfer and Exchange.

With respect to the Registered Securities of each series, if any, the Company shall cause to be kept a register (each such register being herein sometimes referred to as the "Security Register") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Securities of such series and of transfers of the Registered Securities of such series. In the event that the Trustee shall not be the Security Registrar, it shall have the right to examine the Security Register at all reasonable times. The Trustee is hereby initially appointed as Security Registrar for each series of Securities. In the event that the Trustee shall cease to be Security Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times.

Upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

At the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

If provided in or pursuant to this Indenture, with respect to Securities of any series, at the option of the Holder, Bearer Securities of such series may be exchanged for Registered Securities of such series containing identical terms, denominated as authorized in or pursuant to this Indenture and in the same aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any Office or Agency for such series, with all unmatured Coupons and all matured Coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 1002, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such Office or Agency for such series in exchange for a Registered Security of such series and like tenor after the close of business at such Office or Agency on (i) any Regular Record Date and before the opening of business at such Office or Agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such Office or Agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the Person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this

Indenture.

If expressly provided with respect to Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided with respect to such series.

Whenever any Securities are surrendered for exchange as contemplated by the immediately preceding two paragraphs, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, any global Security shall be exchangeable for definitive Securities only if (i) the Depository notifies the Company that it is at any time unwilling, unable or ineligible to continue as Depository and a successor depository is not appointed by the Company within 60 days of the date the Company is so informed in writing, (ii) the Company executes and delivers to the Trustee a Company Order to the effect that such global Security shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing with respect to the Securities. If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, as directed by the Depository, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of, such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the U.S. Depository or such other Depository as shall be specified in the Company Order with respect thereto, and in accordance with instructions given to the Trustee and the U.S. Depository or such other Depository, as the case may be (which instructions shall be in writing but need not be contained in or accompanied by an Officers' Certificate or be accompanied by an Opinion of Counsel), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which (unless such Securities are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the

global Security shall be issuable only in the form in which the Securities are issuable, as provided in or pursuant to this Indenture) shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series and continuing identical terms to be redeemed and ending on the relevant Redemption Date; and provided, further, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository or the U.S. Depository, as the case may be, or such other Depository or U.S. Depository referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such Office or Agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

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

No service charge shall be made for any registration of transfer or exchange or redemption of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than



exchanges pursuant to Section 304, 905 or 1107 not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Company shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of like tenor and the same series under Section 1103 and ending at the close of business (A) if Securities of the series are issuable only as Registered Securities, on the day of the mailing of the relevant notice of redemption, and (B) if Securities of the series are issuable as Bearer Securities, on the day of the first publication of the relevant notice of redemption or, if Securities of the series are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except in the case of any Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except, to the extent provided with respect to such Bearer Security, that such Bearer Security may be exchanged for a Registered Security of like tenor and the same series, provided that such Registered Security shall be immediately surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture or (iv) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, subject to the provisions of this Section 306, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to the surrendered Security.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or Coupon has been acquired by a bona fide purchaser, the Company shall execute and, upon the Company's request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or

stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains.

Notwithstanding the foregoing provisions of this Section 306, in case any mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or Coupon; provided, however, that payment of principal of, any premium or interest on or any Additional Amounts with respect to any Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an Office or Agency for such Securities located outside the United States and, unless otherwise provided in or pursuant to this Indenture, any interest on Bearer Securities and any Additional Amounts with respect to such interest shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section 306, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security, with any Coupons appertaining thereto issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen Coupon appertains shall constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Security and Coupons appertaining thereto or the destroyed, lost or stolen Coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and any Coupons, if any, duly issued hereunder.

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

Section 307.        Payment of Interest and Certain Additional  
                         Amounts; Rights to Interest and Certain  
                         Additional Amounts Preserved.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date

shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest. Unless otherwise provided in or pursuant to this Indenture, in case a Bearer Security is surrendered in exchange for a Registered Security after the close of business at an Office or Agency for such Security on any Regular Record Date therefor and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date therefor, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date and interest shall not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be 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 such Registered Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this Clause provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of such Registered Security (or a Predecessor Security thereof) at his address as it

appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company cause a similar notice to be published at least once in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of 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 Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2). In case a Bearer Security is surrendered at the Office or Agency for such Security in exchange for a Registered Security after the close of business at such Office or Agency on any Special Record Date and before the opening of business at such Office or Agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such proposed date of payment and Defaulted Interest shall not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

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

At the option of the Company, interest on Registered Securities 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 Security Register.

Subject to the foregoing provisions of this Section 307 and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

#### Section 308. Persons Deemed Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may

treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of, any premium and (subject to Sections 305 and 307) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and neither the Company, nor the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security or the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof, for the purpose of conversion and for all other purposes whatsoever, whether or not any payment with respect to such Security or Coupon shall be overdue, and neither the Company, nor the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such global Security, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

#### Section 309. Cancellation.

All Securities and Coupons surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons, as well as Securities and Coupons surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities and Coupons held by the Trustee shall be destroyed by the Trustee, unless by a Company Order the Company directs their return to it in a timely manner.

## Section 310. Computation of Interest.

Except as otherwise provided in or pursuant to this Indenture, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

## ARTICLE FOUR

## SATISFACTION AND DISCHARGE

## Section 401. Satisfaction and Discharge of Indenture.

Upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for and any right to receive Additional Amounts), and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

## (1) either

(A) all Securities theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities surrendered in exchange for Registered Securities and maturing after such exchange whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and Coupons which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) Coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date whose surrender has been waived as provided in Section 1107, and (iv) Securities and Coupons for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all Securities and, in the case of (i) or (ii) below, any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

- (i) have become due and payable, or
- (ii) will become due and payable at their Stated Maturity within one year, or
- (iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, money and/or Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without consideration of any reinstatement thereof, will provide not later than the opening of business on the due dates of any payment of principal and any premium, interest and Additional Amounts with respect thereto, or a combination thereof, money in an amount sufficient to pay and discharge the entire indebtedness on such Securities and Coupons not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of all series as to which it is Trustee and if the other conditions thereto are met. In the event there are two or more Trustees hereunder, then the effectiveness of any such instrument shall be conditioned upon receipt of each such instrument from all Trustees hereunder.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 605, the obligations of the Trustee to any Authenticating Agent under Section 610 and, if money and/or Government Obligations shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 403 and the last paragraph of Section 1003 shall survive.

In the event that, subsequent to the date a discharge is effected pursuant to this Section 401, Additional Amounts in excess of those established as of the date such discharge is effected become payable in respect of any Securities, in order to preserve the benefits of the discharge established hereunder, the Company shall deposit or cause to be deposited in accordance with provisions of this Section 401, within ten business days prior to the earlier to occur of (i) one year after the existence of such excess Additional Amounts is established and (ii) the date the first payment in respect of any portion of such excess Additional Amounts becomes due, such additional funds as are necessary to satisfy the provisions of this Section 401 as if a discharge were being effected as of the date of such subsequent deposit. For purposes of this paragraph, the existence of excess Additional Amounts shall be deemed to have been established as of the date the governmental authority imposing the tax, assessment or other governmental charge resulting in the Additional Amounts first publishes the legislation, regulation or other enactment adopting such tax, assessment or other governmental charge. Failure to comply with the requirements of this paragraph shall result in the termination of the benefits of the discharge established by this Section 401.

Section 402. Satisfaction, Discharge and Defeasance of Securities of any Series.

If provision is made in or pursuant to this Indenture for defeasance of Securities of any series and any Coupons appertaining thereto pursuant to this Section 402, the Company may at any time elect to have this Section 402 be applied to the outstanding Securities and the Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Securities of such series and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of such indebtedness, when

(1) no Event of Default has occurred and is continuing, or would occur upon the giving of notice or the lapse of time at the time such satisfaction and discharge is being effected and either

(A) with respect to all Outstanding Securities of such



series and any Coupons appertaining thereto, the Company has irrevocably deposited or caused to be deposited with the Trustee, as trust funds and/or obligations in trust for such purpose, money and/or Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms, without consideration of any reinvestment thereof, will provide not later than the opening of business on the due dates of any payment of principal and any premium, interest and Additional Amounts with respect thereto, or a combination thereof, money in an amount sufficient to pay and discharge the entire indebtedness on all Outstanding Securities of such series and any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be, as contemplated by the penultimate paragraph of this Section 402; or

(B) the Company has properly fulfilled such other means of satisfaction and discharge as is provided in or pursuant to this Indenture for the Securities of such series; and

(2) the Company has paid or caused to be paid all other sums payable hereunder with respect to the Outstanding Securities of such series and any Coupons appertaining thereto; and

(3) the Company has delivered to the Trustee a certificate signed by Independent Public Accountants certifying as to the sufficiency of the amounts deposited pursuant to subsections (A)(i) or (ii) of this Section for payment of the principal of, any premium and interest on and any Additional Amounts with respect to such Securities and any Coupons appertaining thereto on the dates such payments are due, an Officers' Certificate and an Opinion of Counsel, each such Certificate and Opinion stating that no Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities shall have occurred and all conditions precedent herein provided for relating to the satisfaction and discharge of the entire indebtedness on all Outstanding Securities of any such series and any Coupons appertaining thereto shall have been complied with; and

(4) the Company has delivered to the Trustee

(A) an opinion of independent counsel that the Holders of the Securities of such series and any Coupons appertaining thereto shall have no federal income tax consequences as a result of such deposit and termination; and

(B) if the Securities of such series are then listed on the New York Stock Exchange, an opinion of independent counsel that the Securities of such series shall not be delisted as a result of the exercise of this option.

Any deposits with the Trustee referred to in subsection (1)(A) of this Section shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. If any Outstanding Securities of such series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory sinking fund requirement or otherwise, the Company shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Upon the satisfaction of the conditions set forth in this Section 402 with respect to all the Outstanding Securities of any series and any Coupons appertaining thereto, the terms and conditions of such series (including the terms and conditions with respect thereto set forth in this Indenture, other than the provisions of Sections 305, 306, and 1002 and other than the right of Holders of Securities of such series and any Coupons appertaining thereto to receive, from the trust fund described in this Section, payment of the principal of, any premium or the interest on, or any Additional Amounts with respect to such Securities and any Coupons appertaining thereto when such payments shall be due) and the rights, powers, duties and immunities of the Trustee hereunder with respect to the Securities of such series shall no longer be binding upon, or applicable to, the Company; provided that the Company shall not be discharged from any payment obligations in respect of Securities of such series or any Coupons appertaining thereto which are deemed not to be Outstanding under clause (iii) of the definition of Outstanding if such obligations continue to be valid obligations of the Company under applicable law.

In the event that, subsequent to the date a defeasance is effected pursuant to this Section 402 with respect to Securities of any series, Additional Amounts in excess of those established as of the date such defeasance is effected become payable in respect of such Securities, in order to preserve the benefits of the defeasance established hereunder with respect to such series, the Company shall deposit or cause to be deposited in accordance with the provisions of this Section 402,

within ten business days prior to the earlier to occur of (i) one year after the existence of such excess Additional Amounts is established and (ii) the date the first payment in respect of any portion of such excess Additional Amounts becomes due, such additional funds as are necessary to satisfy the provisions of this Section 402 as if a defeasance were being effected as of the date of such subsequent deposit. For purposes of this paragraph, the existence of excess Additional Amounts shall be deemed to have been established as of the date the governmental authority imposing the tax, assessment or other governmental charge resulting in the Additional Amounts first publishes the legislation, regulation or other enactment adopting such tax, assessment or other governmental charge. Failure to comply with the requirements of this paragraph shall result in the termination of the benefits of the defeasance established by this Section 402 with respect to the Securities of such series.

Section 403. Application of Trust Money.

Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations deposited with the Trustee pursuant to Section 401 or 402 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the Coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, interest and Additional Amounts for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

ARTICLE FIVE

REMEDIES

Section 501. Events of Default.

"Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or be effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (1) default in the payment of any interest on or any Additional

Amounts payable in respect of any Security of such series when such interest becomes or such Additional Amounts become due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of and any premium on any Security of such series when it becomes due and payable at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of such series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Securities (other than a covenant or warranty a default in the performance or the breach of which is elsewhere in this Section specifically dealt with or which has been expressly included in this Indenture solely for the benefit of a series of Securities other than such series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company or any Significant Subsidiary for money borrowed, whether such indebtedness now exists or shall hereafter be created, shall happen and shall result in such indebtedness in principal amount in excess of \$10,000,000 becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such acceleration shall not be rescinded or annulled within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such event of default and requiring the Company to cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) the entry by a court having competent jurisdiction of:

(a) a decree or order for relief in respect of the Company

or any Significant Subsidiary in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(b) a decree or order adjudging the Company or any Significant Subsidiary to be insolvent, or approving a petition seeking reorganization, arrangement, adjustment or composition of the Company or any Significant Subsidiary and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(c) a final and non-appealable order appointing a custodian, receiver, liquidator, assignee, trustee or other similar official of the Company or any Significant Subsidiary or of any substantial part of the property of the Company or any Significant Subsidiary, as the case may be, or ordering the winding up or liquidation of the affairs of the Company or any Significant Subsidiary; or

(7) the commencement by the Company or any Significant Subsidiary of a voluntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or of a voluntary proceeding seeking to be adjudicated insolvent or the consent by the Company or any Significant Subsidiary to the entry of a decree or order for relief in an involuntary proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or to the commencement of any insolvency proceedings against it, or the filing by the Company or any Significant Subsidiary of a petition or answer or consent seeking reorganization or relief under any applicable law, or the consent by the Company or any Significant Subsidiary to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or similar official of the Company or any Significant Subsidiary or any substantial part of the property of the Company or any Significant Subsidiary or the making by the Company or any Significant Subsidiary of an assignment for the benefit of creditors, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action; or

(8) any other Event of Default provided in or pursuant to this Indenture with respect to Securities of such series.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of

any default of the character specified in Section 501(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default specified in Section 501(6) or 501(7) with respect to Securities of any series at the time Outstanding occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of such series may declare the principal of all the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

- (1) the Company has paid or deposited with the Trustee a sum of money sufficient to pay
  - (A) all overdue installments of any interest on and any Additional Amounts with respect to all Securities of such series and any Coupon appertaining thereto,
  - (B) the principal of and any premium on any Securities of such series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,
  - (C) to the extent that payment of such interest is lawful, interest upon overdue installments of any interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and
  - (D) all sums paid or advanced by the Trustee hereunder

and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of such series, other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 513.

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

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(1) default is made in the payment of any installment of interest on or any Additional Amounts with respect to any Security or any Coupon appertaining thereto when such interest or Additional Amounts shall have become due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of or any premium on any Security at its Maturity,

the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities and any Coupons appertaining thereto, the whole amount of money then due and payable with respect to such Securities and any Coupons appertaining thereto, with interest upon the overdue principal, any premium and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount of money as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the

Company or any other obligor upon such Securities and any Coupons appertaining thereto and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities and any Coupons appertaining thereto, wherever situated.

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

Section 504. Trustee May File Proofs of Claim.

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

(i) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and any Coupons appertaining thereto 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 or counsel) and of the Holders of Securities or any Coupons allowed in such judicial proceeding, and

(ii) to collect and receive any monies 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 of Securities



or any Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities or any Coupons, to pay to the Trustee any amount due to 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 605.

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

Section 505. Trustee May Enforce Claims without Possession of Securities or Coupons.

All rights of action and claims under this Indenture or any of the Securities or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or Coupons 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 or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of a Security or Coupon in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Subject to the provisions of Article Sixteen, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of the Securities or Coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 605;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and any Coupons for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind,

according to the aggregate amounts due and payable on such Securities and Coupons for principal and any premium, interest and Additional Amounts, respectively;

THIRD: The balance, if any, to the Person or Persons entitled thereto.

Section 507. Limitations on Suits.

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

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

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

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

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

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

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

Section 508. Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts and to Convert any Convertible Security.

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of, any premium and (subject to Sections 305 and 307) interest on, and any Additional Amounts with respect to such Security or payment of such Coupon, as the case may be, on the respective Stated Maturity or Maturities therefor specified in such Security or Coupon (or, in the case of redemption, on the Redemption Date or, in the case of repayment at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and to institute suit for the enforcement of any such payment, and shall have the right to convert any such Security which is a Convertible Security in accordance with the terms hereof and thereof and to institute suit for enforcement of such right; and such rights shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies.

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

Section 510. Rights and Remedies.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security or a Coupon is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

## Section 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security or Coupon 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. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security or a Coupon may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

## Section 512. Control by Holders of Securities.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series and any Coupons appertaining thereto, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of any series,

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

(3) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series not joining in such action.

## Section 513. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series and any Coupons appertaining thereto may waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to any Security of such series or any Coupons appertaining thereto, or

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

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

Section 514. Waiver of Stay or Extension Laws.

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

ARTICLE SIX

THE TRUSTEE

Section 601. Certain Rights of Trustee.

Subject to Sections 315(a) through 315(d) of the Trust

Indenture Act:

(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, direction, consent, order, bond, debenture, note, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order (in each case, other than delivery of any Security, together with any Coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence

shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any Coupons appertaining thereto pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(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, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent or attorney; and

(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.

Section 602. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any Coupons shall be taken as the statements of the Company and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the

statements made by it in a Statement of Eligibility and Qualification on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

Section 603. May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person.

Section 604. Money Held in Trust.

Except as provided in Section 403 and Section 1003, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 605. Compensation and Reimbursement.

The Company agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or bad faith; and

(3) to indemnify the Trustee and its agents for, and to hold them harmless against, any loss, liability or expense incurred without negligence or

bad faith on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section 605, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such (and not subordinated in right of payment to the prior payment in full of the Senior Indebtedness), except funds held in trust for the payment of principal of, and premium or interest on or any Additional Amounts with respect to Securities or any Coupons appertaining thereto.

Section 606. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder that is a Corporation permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 606, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 607. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 608.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 608 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(c) 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 the Company.



(d) If at any time:

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

(2) the Trustee shall cease to be eligible under Section 606 and shall fail to resign after written request therefor by the Company or any such Holder, 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,

then, in any such case, (i) the Company, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 608. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such

appointment in accordance with the applicable requirements of Section 608, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by Section 608, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Registered Securities, if any, of such series as their names and addresses appear in the Security Register and, if Securities of such series are issued as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 608. Acceptance of Appointment by Successor.

(a) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 605.

(b) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Company,

the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any Person appointed hereunder as a successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such

rights, powers and trusts referred to in paragraph (a) or (b) of this Section 608, as the case may be.

(d) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

Section 609. Merger, Conversion, Consolidation or Succession to Business.

Any Corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 610. Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer or partial redemption or conversion thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Company and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus

(computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 610, it shall resign immediately in the manner and with the effect specified in this Section 610.

Any Corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, provided such Corporation shall be otherwise eligible under this Section 610, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall (i) mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register, and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 610.

The Trustee agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section 610 and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 605.

The provisions of Sections 308, 602 and 603 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section 610, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

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

\_\_\_\_\_, As Trustee

By \_\_\_\_\_ As Authenticating Agent

By \_\_\_\_\_ Authorized Signatory

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officers' Certificate by the Company), shall appoint in accordance with this Section 610 an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

#### ARTICLE SEVEN

##### HOLDER'S LISTS AND REPORTS BY TRUSTEE, AND COMPANY

Section 70.1      Company to Furnish Trustee Names and  
Addresses of Holders.

In accordance with Section 312(a) of the Trust Indenture Act, the Company shall furnish or cause to be furnished to the Trustee

(a) semi-annually with respect to Securities of each series on June 30 and December 31 of each year or upon such other dates as are set forth in or pursuant to the Board Resolution or indenture supplemental hereto authorizing such series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date, and

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

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

Section 702. Preservation of Information; Communications to Holders.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or Coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 703. Reports by Trustee.

(a) Within 60 days after September 15 of each year commencing with the first September 15 following the first issuance of Securities pursuant to Section 301, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such September 15 with respect to any of the events specified in said Section 313(a) which may have occurred since the later of the immediately preceding September 15 and the date of this Indenture.

(b) The Trustee shall transmit the reports required by Section 313(b) of the Trust Indenture Act at the times specified therein.

(c) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

Section 704. Reports by Company.

The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 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;

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

(3) transmit within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section 704 as may be required by rules and regulations prescribed from time to time by the Commission.



## ARTICLE EIGHT

## CONSOLIDATION, MERGER AND SALES

## Section 801. Company May Consolidate, Etc., Only on Certain Terms.

Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Company with or into any other Person or Persons (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any conveyance, transfer or lease of the property of the Company as an entirety or substantially as an entirety, to any other Person (whether or not affiliated with the Company); provided, however, that:

(1) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a Corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by the successor Person and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, any premium and interest on and any Additional Amounts with respect to all the Securities and the performance of every other covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction, no event which, after notice or lapse of time, would become an Event of Default, shall have occurred and be continuing;

(3) either the Company or the successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

## Section 802. Successor Person Substituted for Company.

Upon any consolidation or merger or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease to another Person, the predecessor Person shall be released from all obligations and covenants under this Indenture, the Securities and the Coupons.

## ARTICLE NINE

## SUPPLEMENTAL INDENTURES

## Section 901. Supplemental Indentures without Consent of Holders.

Without the consent of any Holders of Securities or Coupons, the Company (when authorized by or pursuant to a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company; or

(3) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of, any premium or interest on or any Additional Amounts with respect to Securities, to permit Registered Securities to be exchanged for Bearer Securities, to permit Bearer Securities to be exchanged for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided any

such action shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto in any material respect; or

(4) to establish the form or terms of Securities of any series and any Coupons appertaining thereto as permitted by Sections 201 and 301; or

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 608; or

(6) to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto in any material respect; or

(7) to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Securities, as herein set forth; or

(8) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or

(9) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Article Four; provided that any such action shall not adversely affect the interests of any Holder of a Security of such series and any Coupons appertaining thereto or any other Security or Coupon in any material respect; or

(10) to secure the Securities pursuant to Section 1006 or otherwise;

(11) to make provision with respect to the conversion rights of Holders of Convertible Securities pursuant to the requirements of Section 1706; or

(12) to amend or supplement any provision contained herein or in any supplemental indenture, provided that no such amendment or supplement shall materially adversely affect the interests of the Holders of any Securities then Outstanding.

Section 902. Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or pursuant to a Company's Board Resolution), and the Trustee may enter into an Indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall

(1) change the Stated Maturity of the principal of, or any premium or installment of interest on or any Additional Amounts with respect to, any Security, or reduce the principal amount thereof or the rate of interest thereon or any Additional Amounts with respect thereto, or any premium payable upon the redemption thereof or otherwise, or change the obligation of the Company to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect the right of repayment at the option of any Holder as contemplated by Article Thirteen, or change the Place of Payment, Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security 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 Redemption Date or, in the case of repayment at the option of the Holder, on or after the date for repayment), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the

requirements of Section 1504 for quorum or voting,

(3) modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders,

(4) modify any of the provisions of this Section 902, or Section 513 or Section 1008, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, or

(5) adversely affect the right to convert any Convertible Security.

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

It shall not be necessary for any Act of Holders of Securities under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

#### Section 903. Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Article Six hereof) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder and of any Coupon appertaining thereto shall be bound thereby.

Section 905. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 906. Subordination Unimpaired.

No supplemental indenture entered into under this Article shall modify, directly or indirectly, the provisions of Article Sixteen or the definition of Senior Indebtedness in Section 101 in any manner that might alter or impair the subordination of the Securities with respect to Senior Indebtedness then outstanding, unless each holder of such Senior Indebtedness has consented thereto in writing.

Section 907. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article Nine shall conform to the requirements of the Trust Indenture Act.

## ARTICLE TEN

### COVENANTS

Section 1001. Payment of Principal and any Premium, Interest and Additional Amounts.

The Company covenants and agrees for the benefit of the Holders of the Securities of each series that it will duly and punctually pay the principal of, any premium and interest on and any Additional Amounts with respect to the Securities of such series in accordance with the terms thereof, any Coupons appertaining thereto and this Indenture. Any interest due on any Bearer Security on or before the Maturity thereof, and any Additional Amounts payable with respect to such interest, shall be payable only upon presentation and surrender of the Coupons appertaining thereto for such interest as they severally mature.

## Section 1002. Maintenance of Office or Agency.

The Company shall maintain in each Place of Payment for any series of Securities an Office or Agency where Securities of such series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such series relating thereto and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company shall maintain, subject to any laws or regulations applicable thereto, an Office or Agency in a Place of Payment for such series which is located outside the United States where Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment; provided, however, that if the Securities of such series are listed on any stock exchange located outside the United States and such stock exchange shall so require, the Company shall maintain a Paying Agent in the required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such Office or Agency. If at any time the Company shall fail to maintain any such required Office or Agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment at the place specified for the purpose with respect to such Securities as provided in or pursuant to this Indenture, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in or pursuant to this Indenture, no payment of principal, premium, interest or Additional Amounts with respect to Bearer Securities shall be made at any Office or Agency in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, if amounts owing with respect to any Bearer Securities shall be payable in Dollars, payment of principal of, any premium or interest on and any Additional Amounts with respect to any such Security may be made at the Corporate Trust Office of the Trustee or any Office or Agency designated by the Company in The City of New York, if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for such purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other Offices or Agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an Office or Agency in each Place of Payment for Securities of any series for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other Office or Agency. Unless otherwise provided in or pursuant to this Indenture, the Company hereby designates as the Place of Payment for each series The City of New York, and initially appoints the Office or Agency of the Corporate Trust Office of the Trustee for such purpose. Pursuant to Section 301(9) of this Indenture, the Company may subsequently appoint a place or places in The City of New York where such Securities may be payable.

Section 1003. Money for Securities Payments to Be Held in

Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of, any premium or interest on or Additional Amounts with respect to any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum of money sufficient to pay the principal or any premium, interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure so to act.

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

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

- (1) hold all sums held by it for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to Securities



of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in or pursuant to this Indenture;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment of principal, any premium or interest on or any Additional Amounts with respect to the Securities of such series;

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

(4) comply with the provisions of the Trust Indenture Act applicable to it as Paying Agent.

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

Except as otherwise provided herein or pursuant hereto, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Security of any series and remaining unclaimed for two years after such principal or any such premium or interest or any such Additional Amounts shall have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment for such series or to be mailed to Holders of Registered Securities of such series, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be later than

two years after such principal and any premium or interest or Additional Amounts shall have become due and payable, any unclaimed balance of such money then remaining will be repaid to the Company.

#### Section 1004. Additional Amounts.

If any Securities of a series provide for the payment of Additional Amounts, the Company agrees to pay to the Holder of any such Security or any Coupon appertaining thereto Additional Amounts as provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or any Coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provision hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise provided in or pursuant to this Indenture, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to such series of Securities (or if the Securities of such series shall not bear interest prior to Maturity, the first day on which a payment of principal is made), and at least 10 days prior to each date of payment of principal or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish to the Trustee and the principal Paying Agent or Paying Agents, if other than the Trustee, an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of or interest on the Securities of such series shall be made to Holders of Securities of such series or the Coupons appertaining thereto who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of such series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities or Coupons, and the Company agrees to pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense (including reasonable fees and expenses) reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished

pursuant to this Section 1004.

Section 1005. Limitation Upon Disposition of Voting Stock of Significant Subsidiaries.

So long as any of the Securities shall be Outstanding but subject to the provisions of Article Eight, the Company:

(a) will not, nor will it permit any Subsidiary to, sell, assign, transfer or otherwise dispose of any shares of, securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary (other than sales of directors qualifying shares), and will not permit a Significant Subsidiary to issue any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, such Voting Stock (other than sales of directors qualifying shares) if, in each case, after giving effect to any such transaction and to the issuance of the maximum number of shares of Voting Stock of such Significant Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, such Significant Subsidiary would cease to be a Controlled Subsidiary, or

(b) will not permit a Significant Subsidiary to

(i) merge or consolidate with or into any other corporation, unless the surviving corporation is the Company or is, or upon consummation of the merger or consolidation will become, a Controlled Subsidiary; or

(ii) lease, sell or transfer all or substantially all of its properties and assets to any corporation or other Person, except to the Company or to a Controlled Subsidiary or a Person that, upon such lease, sale or transfer, will become a Controlled Subsidiary.

Notwithstanding the foregoing, any such sale, assignment or transfer of securities, any such merger or consolidation or any such lease, sale or transfer of properties and assets shall not be prohibited if required (i) by any law or any rule, regulation or order of any governmental agency or authority or (ii) as a condition imposed by any law or any rule, regulation or order of any governmental agency or authority to the acquisition by the Company, directly or indirectly, through purchase of stock or assets, merger, consolidation or otherwise, of any Person, provided that, after giving effect to such disposition and acquisition, (A) such Person will be a Controlled Subsidiary, and (B) the Consolidated Assets of the Company will be at least equal to

the Consolidated Assets of the Company prior thereto; and nothing in this section shall prohibit the Company from the sale or transfer of assets in connection with any securitization transaction.

Section 1006. Limitation on Creation of Liens.

So long as any of the Securities shall be outstanding, the Company will not, nor will it permit any Subsidiary to, create, assume, incur or suffer to be created, assumed or incurred or to exist any pledge, encumbrance or lien, as security for indebtedness for borrowed money, upon any shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of a Significant Subsidiary, directly or indirectly, without making effective provision whereby the Securities of all series shall be equally and ratably secured with any and all such indebtedness if, treating such pledge, encumbrance or lien as a transfer of the shares of, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of, Voting Stock subject thereto to the secured party and to the issuance of the maximum number of shares of Voting Stock of such Significant Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, such Significant Subsidiary would not continue to be a Controlled Subsidiary.

Section 1007. Corporate Existence.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of each Significant Subsidiary and its rights (charter and statutory) and franchises and those of each such Significant Subsidiary; provided, however, that neither the Company nor any Significant Subsidiary shall be required to preserve any such right or franchise if the Company or such Significant Subsidiary, as the case may be, shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 1008. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 1005, 1006 or 1007 with respect to the Securities of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall

extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1009. Company Statement as to Compliance; Notice of Certain Defaults.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, a written statement (which need not be contained in or accompanied by an Officers' Certificate) signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating that

(1) a review of the activities of the Company during such year and of its performance under this Indenture has been made under his or her supervision, and

(2) to the best of his or her knowledge, based on such review, (a) the Company has complied with all the conditions and covenants imposed on it under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such condition or covenant, specifying each such default known to him or her and the nature and status thereof, and (b) no event has occurred and is continuing which is, or after notice or lapse of time or both would become, an Event of Default, or, if such an event has occurred and is continuing, specifying each such event known to him and the nature and status thereof.

[(b) The Company shall deliver to the Trustee, within five days after the occurrence thereof, written notice of any event which after notice or lapse of time or both would become an Event of Default pursuant to clause (4) of Section 501.]

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

Section 1101. Applicability of Article.

Redemption of Securities of any series at the option of the Company as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant

hereto) this Article.

Section 1102. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of the Securities of any series, with the same issue date, interest rate, Stated Maturity and other terms, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

Section 1103. Selection by Trustee of Securities to be Redeemed.

If less than all the Securities of any series with the same issue date, interest rate, Stated Maturity and other terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; provided, however, that no such partial redemption shall reduce the portion of the principal amount of a Registered Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto.

If any Convertible Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

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

## Section 1104. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portion thereof.

Any notice that is mailed to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, and, if applicable, that interest thereon shall cease to accrue on and after said date,
- (6) the place or places where such Securities, together (in the case of Bearer Securities) with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto,

(7) that the redemption is for a sinking fund, if such is the case,

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all Coupons maturing subsequent to the date fixed for redemption or the amount of any such missing Coupon or Coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on the Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be made,

(10) the CUSIP number or the Euro-clear or the CEDEL reference numbers of such Securities, if any (or any other numbers used by a Depository to identify such Securities), and

(11) in the case of Convertible Securities, the Conversion Price then in effect, the date on which the right to convert the principal amount of the Securities or the portions thereof to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion.

A notice of redemption published in an Authorized Newspaper as contemplated by Section 106 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

Section 1105. Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on and Additional Amounts with respect thereto, all the Securities or portions thereof which are to be redeemed on that date.



If any Convertible Security or portion thereof called for redemption is converted pursuant to Article Seventeen, any money deposited with the Trustee or so segregated and held in trust for the redemption of such Security or portion thereof shall (subject to any right of the Holder of the Security on a Regular Record Date preceding such conversion to receive interest) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with any accrued interest and Additional Amounts to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an Office or Agency located outside the United States except as otherwise provided in Section 1002), and provided, further, that installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that any interest or Additional Amounts represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such Security located outside of

the United States except as otherwise provided in Section 1002.

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

Section 1107. Securities Redeemed in Part.

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Security in global form is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the U.S. Depository or other Depository for such Security in global form as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Security in global form in a denomination equal to and in exchange for the unredeemed portion of the principal of the Security in global form so surrendered.

Section 1108. Conversion Arrangements on Call for Redemption.

Notwithstanding anything to the contrary contained in this Indenture, in connection with any redemption of Convertible Securities of any series, the Company, by an agreement with one or more investment bankers or other purchasers, may arrange for such purchasers to purchase all such Convertible Securities called for redemption (the "Called Securities") which are either (i) surrendered for redemption or (ii) not duly surrendered for redemption or conversion prior to the close of business on the Redemption Date, and to convert the same into shares of Common Stock, by the purchasers' depositing with the Trustee (acting as Paying Agent with respect to the deposit of such amount and as conversion agent with respect to the conversion of such Called Securities), in trust for the Holders of the Called Securities, on or prior to the Redemption Date in the manner agreed to by the Company and such purchasers, an amount sufficient to pay the Redemption Price, payable by the Company on redemption of such Called Securities. In connection with any such arrangement for purchase and conversion, the Trustee as Paying Agent shall pay on or after the Redemption Date such amounts so deposited by the purchasers in exchange for Called Securities

surrendered for redemption prior to the close of business on the Redemption Date and for all Called Securities surrendered after such Redemption Date. Notwithstanding anything to the contrary contained in this Article Eleven, the obligation of the Company to pay the Redemption Price of such Called Securities shall be satisfied and discharged to the extent such amount is so paid by such purchasers, provided, however, that nothing in this Section 1108 shall in any way relieve the Company of the obligation to pay such Redemption Price on all Called Securities to the extent such amount is not so paid by said purchasers. For all purposes of this Indenture, any Called Securities surrendered by the Holders for redemption, and any Called Securities not duly surrendered for redemption or conversion prior to the close of business on the Redemption Date, shall be deemed acquired by such purchasers from such Holders and surrendered by such purchasers for conversion and shall in all respects be deemed to have been converted, all as of immediately prior to the close of business on the Redemption Date, subject to the deposit by the purchasers of the above amount as aforesaid. Nothing in this Section 1108 shall in any way limit the right of any Holder of a Security to convert his Security pursuant to the terms of this Indenture and of such Security at any time prior to the close of business on the Redemption Date applicable thereto.

## ARTICLE TWELVE

### SINKING FUNDS

#### Section 1201. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise permitted or required by any form of Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

#### Section 1202. Satisfaction of Sinking Fund Payments with Securities.

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Company), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities or which have been surrendered for conversion pursuant to Article Seventeen, provided that such series of Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such series for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that series purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

#### Section 1203. Redemption of Securities for Sinking Fund.

Not less than 45 days prior to each sinking fund payment date for any series of Securities (unless a shorter notice shall be satisfactory to the Trustee), the Company shall deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 40 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon

such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given not less than 30 nor more than 40 days prior to the sinking fund payment date in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

#### ARTICLE THIRTEEN

##### REPAYMENT AT THE OPTION OF HOLDERS

###### Section 1301. Applicability of Article.

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 1301, in connection with any repayment of Securities, the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the close of business on the repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

#### ARTICLE FOURTEEN

##### SECURITIES IN FOREIGN CURRENCIES

###### Section 1401. Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary in the form of Security of any particular series, any amount in respect of any Security denominated in

a Currency other than Dollars shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

## ARTICLE FIFTEEN

### MEETINGS OF HOLDERS OF SECURITIES

#### Section 1501. Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

#### Section 1502. Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place in The City of New York, or, if Securities of such series have been issued in whole or in part as Bearer Securities, in London or in such place outside the United States as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company (by or pursuant to a Board Resolution) or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may

determine the time and the place in The City of New York, or, if Securities of such series are to be issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section 1502.

Section 1503. Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 1504. Quorum; Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series, the Persons entitled to vote 66-2/3% in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as

aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; provided, however, that, except as limited by the proviso to Section 902, any resolution with respect to any consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly convened and at which a quorum is present as aforesaid only by the affirmative vote of the Holders of 66-2/3% in principal amount of the Outstanding Securities of that series; and provided, further, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section 1504 shall be binding on all the Holders of Securities of such series and the Coupons appertaining thereto, whether or not such Holders were present or represented at the meeting.

Section 1505. Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series 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 deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) 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 Holders of Securities as provided in Section 1502(b), in which case the Company or the Holders of Securities of the series 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 vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting, each Holder of a Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any 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, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

#### Section 1506. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series 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 triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series 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 given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the

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

## ARTICLE SIXTEEN

### SUBORDINATION

#### Section 1601. Securities Subordinated to Senior Indebtedness

The Company covenants and agrees, and each Holder of Securities, by his acceptance thereof, likewise covenants and agrees, that the indebtedness evidenced by the Securities and the payment of the principal of (and premium, if any) and interest on and any Additional Amounts payable in respect thereof 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.

Anything in this Indenture or in the Securities of any series to the contrary notwithstanding, the indebtedness evidenced by the Securities shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Senior Indebtedness:

(a) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization, arrangement or other similar proceedings in connection therewith, relative to the Company or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding-up of the Company, whether or not involving insolvency or bankruptcy, then the holders of Senior Indebtedness shall be entitled to receive payment in full of all principal, premium and interest on all Senior Indebtedness before the Holders of the Securities or any Coupons are entitled to receive any payment on account of principal, premium, if any, interest or Additional Amounts upon the Securities, and to that end (but subject to the power of a court of competent jurisdiction to make other equitable provisions reflecting the rights conferred in the Securities upon Senior Indebtedness and the Holders thereof with respect to the subordinated indebtedness represented by the Securities and the Holders hereof by a lawful plan of reorganization under applicable bankruptcy law) the holders of Senior Indebtedness shall be entitled to receive for application in payment thereof any payment or distribution of

any kind or character, whether in cash or property or securities, which may be payable or deliverable in any such proceedings in respect of the Securities after giving effect to any concurrent payment or distribution in respect of such Senior Indebtedness. For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Indebtedness which may at the time be outstanding to the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance, transfer or lease of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article Eight shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or lease such properties and assets substantially as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions set forth in Article Eight.

(b) In the event that any Security of any series is declared or otherwise becomes due and payable before its expressed maturity because of the occurrence of an Event of Default hereunder (under circumstances when the provisions of the foregoing clause (a) or the following clause (c) shall not be applicable), the holders of Senior Indebtedness outstanding at the time such Security so becomes due and payable because of such occurrence of an Event of Default hereunder shall, so long as such declaration has not been rescinded and annulled pursuant to Section 502, be entitled to receive payment in full of all principal of, and premium and interest on, all such Senior Indebtedness before the Holders of the Securities of such series are entitled to receive any payment on account of principal of, premium, if any, or interest and Additional Amounts on the Securities of such series; provided, that nothing herein shall prevent the Holders of Securities from seeking any remedy allowed at law or in equity so long as any judgment or decree obtained thereby makes provision for enforcing this clause; and

(c) (1) In the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on any Senior Indebtedness beyond any applicable grace period with respect thereto, or in the event that any event of default with respect to any Senior Indebtedness shall have occurred and be continuing permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to declare such Senior Indebtedness due and payable prior to the date on which it would otherwise have become due and payable, unless and until such event of default shall have been cured or waived or shall have ceased to exist and such acceleration shall have been rescinded or annulled, or (2) in the event any judicial proceeding shall be pending with respect to any such default in payment, or event of default, then no payment shall be made by the Company on account of principal of (or premium, if any) or interest on the Securities of any series or on account of the purchase or other acquisition of Securities of any series.

In case despite the foregoing provisions, any payment or distribution shall, in any such event, be paid or delivered to any Holder of the Securities or to the Trustee for their benefit before all Senior Indebtedness shall have been paid in full, such payment or distribution shall be held in trust for and so paid and delivered to the holders of Senior Indebtedness (or their duly authorized representatives) until all Senior Indebtedness shall have been paid in full.

The Company shall give written notice to the Trustee within five days after the occurrence of any insolvency, bankruptcy, receivership, liquidation, reorganization, arrangement or similar proceeding of the Company within the meaning of this Section 1601. Upon any payment or distribution of assets of the Company referred to in this Article Sixteen, the Trustee, subject to the provisions of Section 315(a) through 315(b) of the Trust Indenture Act, and the Holders of the Securities shall be entitled to rely upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors or other liquidating agent making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Sixteen.

In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Section 1601, the Trustee may request such Person to furnish evidence to the reasonable

satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participate in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Section 1601, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 1602. 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 1601, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until all amounts owing on the 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 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 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 Sixteen are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Section 1603. Provisions Solely to Define Relative Rights.

The provisions of this Article Sixteen are, and are intended solely for the purpose of defining the relative rights of the holders of the Securities of a series on the one hand and the holders of Senior Indebtedness on the other hand. Nothing contained in this Article Sixteen or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company and its creditors other than the holders of Senior Indebtedness and the Holders of the Securities, the obligation of the Company which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any), interest on, or any Additional Amounts with respect to, the Securities and Coupons as and when the same shall become due and payable in accordance with their terms, or (b) affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article Sixteen of the holders of Senior Indebtedness to receive cash, property or securities of the Company otherwise payable

or deliverable to the Trustee or such Holder.

Upon any payment or distribution of assets of the Company referred to in this Article Sixteen, the Trustee and the Holders of the 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 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 Sixteen.

Section 1604. Payments on Securities Permitted if No Default.

Nothing contained in this Article Sixteen or elsewhere in this Indenture, or in any of the 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), interest or any Additional Amounts on the Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article Sixteen.

Section 1605. Effectuation of Subordination By Trustee.

Each Holder of 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 Sixteen and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 1606. Knowledge of Trustee.

Notwithstanding the provisions of this Article Sixteen or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Indebtedness, or any default in the payment of the principal of or the premium, if any, or interest or Additional Amounts on any Senior Indebtedness, except any Senior Indebtedness issued pursuant to an instrument to which the Trustee hereunder is a party or pursuant to an indenture under which the Trustee hereunder is Trustee, or of any facts which would prohibit the making of any payment of monies 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, before 12:00 noon on the last Business Day prior to the date on which such payment is due, from the Company, any

Holder of the Securities, any paying or conversion agent of the Company or the holder or representative of any class of Senior Indebtedness who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such a holder.

Section 1607. Trustee's Relation to Senior Indebtedness.

Except as otherwise provided in the Trust Indenture Act, the Trustee 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 this Indenture shall deprive the Trustee of any of its rights as such holder. Notwithstanding anything in this Indenture or in the Securities of any series, nothing in this Article Sixteen shall apply to claims of or payment to the Trustee under or pursuant to Sections 506 and 605.

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

Section 1608. 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 or covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities of any series, without incurring responsibility to the Holders of the Securities of any series and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of Senior Indebtedness, do

any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iii) release any Person liable in any manner for the collection of Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

## ARTICLE SEVENTEEN

### CONVERSION

#### Section 1701. Conversion Privilege.

Subject to and upon compliance with the provisions of this Article Seventeen and the terms of the Convertible Securities of the series proposed to be converted, at the option of the Holder, any Convertible Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple thereof, may be converted into shares of Common Stock, as said shares shall be constituted at the Date of Conversion, at the Conversion Price for such Convertible Securities of such series in effect at the Date of Conversion.

#### Section 1702. Manner of Exercise of Conversion Privilege.

In order to exercise the conversion privilege, the Holder of any Convertible Security to be converted shall surrender such Convertible Security to the Company at its office or agency in The City of New York, together with the conversion notice in the form provided on the Securities (or separate written notice) duly executed, and, if so required by the Company, accompanied by instruments of transfer, in form satisfactory to the Company and to the Trustee, duly executed by the Holder or by his duly authorized attorney in writing. Any Registered Convertible Security so surrendered during the period from the close of business on the Regular Record Date preceding an Interest Payment Date for such Registered Convertible Security to the opening of business on such Interest Payment Date shall (unless any such Registered Convertible Security or the portion thereof being converted shall have been called for redemption on a Redemption Date during such period, in which event no interest shall be payable with respect to such Registered Convertible Security or portion thereof, as the case may be, following such Redemption Date) also be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount



equal to the interest payable on such Interest Payment Date on the principal amount of such Registered Convertible Security then being converted; provided, however, that no such payment need be made if there shall exist, at the time of conversion, a default in the payment of interest on the Convertible Securities of such series. Except as provided in the immediately preceding sentence, no adjustment shall be made for interest accrued on any Convertible Security that shall be converted or for dividends on any shares of Common Stock that shall be delivered upon the conversion of such Convertible Securities. The funds so delivered to such office or agency shall be paid to the Company on or after such Interest Payment Date, unless the Company shall default in the payment of the interest due on such Interest Payment Date, in which event such funds shall be repaid to the Person who delivered the same. As promptly as practicable after the surrender of any Convertible Security for conversion as aforesaid, the Company shall deliver at said office or agency to such Holder, or on his written order, a certificate or certificates for the number of full shares deliverable upon the conversion of such Convertible Security or portion thereof and a check or cash in respect of any fraction of a share of Common Stock otherwise deliverable upon such conversion, all as provided in this Article Seventeen, together with a Convertible Security or Convertible Securities of the same series in principal amount equal to the unconverted and unredeemed portion, if any, of the Convertible Security so converted in accordance with Section 305 hereof. Such conversion shall be deemed to have been effected on the date on which such notice shall have been received at said office or agency and such Convertible Security shall have been surrendered as aforesaid, and the Person or Persons in whose name or names any certificate or certificates, for shares of Common Stock shall be deliverable upon such conversion shall be deemed to have become on said date the Holder or Holders of record of the shares represented thereby, provided, however, that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificates are to be delivered as the record Holder or Holders thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date of such surrender.

#### Section 1703. Cash Adjustment Upon Conversion.

The Company shall not be required to deliver fractions of shares of Common Stock upon conversions of Convertible Securities. If more than one Convertible Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be deliverable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities so surrendered. If any fractional interest in a share of Common Stock would be deliverable upon the conversion of any Convertible Security or Securities, the Company shall make

an adjustment therefor in cash equal to the current market value of such fractional interest computed to the nearest cent either on the basis of the last reported sale price regular way of the Common Stock on the New York Exchange (or, if not listed on the New York Exchange, then on such other exchange on which the shares of Common Stock are listed as the Company may designate) on the last Business Day prior to the Date of Conversion or, if there shall not have been a sale on such last Business Day, on the basis of the average of the bid and asked quotations therefor on such exchange on such last Business Day or, if the Common Stock shall not then be listed on any exchange, at the highest bid quotation in the over-the-counter market on such last Business Day as reported by the National Association of Securities Dealers through NASDAQ, its automated system for reporting quotes, or its successor or such other generally accepted source of publicly reported bid and asked quotations as the Company may reasonably designate.

Section 1704. Conversion Price.

The Conversion Price applicable to any series of Convertible Securities shall be the initial Conversion Price set forth on the Officers' Certificate or supplemental indenture establishing such series adjusted as provided in this Article Seventeen.

Section 1705. Adjustment of Conversion Price.

The Conversion Price applicable to any series of Convertible Securities shall be adjusted from time to time as follows:

(a) In case the Company shall, at any time or from time to time while the Securities of any series are Outstanding, (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price for such series in effect immediately prior thereto shall be adjusted so that the Holder of any Security of such series thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock or other securities of the Company which he would have owned or have been entitled to receive after the happening of any of the events described above, had such Convertible Security of such series been converted immediately prior to the happening of such event. An adjustment made pursuant to this subdivision (a) shall become effective, in the case of a dividend, on the payment date retroactively to immediately after the opening of business on the day following the record date for the determination of stockholders entitled to receive such dividend, subject to the provisions of paragraph (g) of this Section 1705, and shall become effective

in the case of a subdivision or combination immediately after the opening of business on the day following the day when such subdivision or combination, as the case may be, becomes effective.

(b) In case the Company shall, at any time or from time to time while the Convertible Securities of any series are Outstanding, issue rights or warrants to all holders of its shares of Common Stock entitling them (for a period expiring within 45 days of the record date mentioned below) to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share of Common Stock (as defined in paragraph (d) below) at such record date, the Conversion Price of any series of Convertible Securities in effect immediately prior to the issuance of such rights or warrants shall be adjusted as follows: the number of shares of Common Stock into which \$1,000 principal amount of Convertible Securities of such series was theretofore convertible shall be multiplied by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding immediately prior to such record date plus the number of additional shares of Common Stock offered for subscription or purchase, and of which the denominator shall be the number of shares of Common Stock outstanding immediately prior to such record date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such current market price; and the Conversion Price for such series of Convertible Securities shall be adjusted by dividing \$1,000 by the new number of shares into which \$1,000 principal amount of Securities of such series shall be convertible as aforesaid. Such adjustment shall become effective on the date of such issuance retroactively to immediately after the opening of business on the day following the record date for the determination of shareholders entitled to receive such rights or warrants, subject to the provisions of paragraph (g) of this Section 1705. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such current market price, and in determining the aggregate offering price of such shares, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case the Company shall, at any time from time to time while the Convertible Securities of any series are Outstanding, distribute to all holders of shares of its Common Stock evidences of its indebtedness or securities or assets (excluding cash dividends or cash distributions payable out of consolidated net earnings or retained earnings) or rights or warrants to subscribe for shares of Common Stock at a price per share less than the current

market price per share of Common Stock, determined in the manner set forth in paragraph (d) below, but excluding rights or warrants referred to in paragraph (b) above, the Conversion Price for such series of Convertible Securities in effect immediately prior to such distribution shall be adjusted by multiplying the number of shares of Common Stock into which \$1,000 principal amount of Convertible Securities of such series of Convertible Securities was theretofore convertible by a fraction, of which the numerator shall be the current market price per share of Common Stock (as defined in paragraph (d) below) on the record date for such distribution, and of which the denominator shall be such current market price per share of the Common Stock, less the then fair market value (as determined by the Board of Directors of the Company, whose determination shall be conclusive) of the portion of such evidences of indebtedness, securities or assets or of such subscription rights or warrants so distributed applicable to one share of Common Stock; and the Conversion Price for such series of Convertible Securities shall be adjusted by dividing \$1,000 by the new number of shares into which \$1,000 principal amount of Convertible Securities of such series shall be convertible as aforesaid. Such adjustment shall become effective on the date of such distribution retroactively to immediately after the opening of business on the day following the record date for the determination of shareholders entitled to receive such distribution, subject to the provisions of paragraph (g) of this Section 1705. For the purposes of this paragraph (c) consolidated net earnings or retained earnings shall be computed by adding thereto all charges against retained earnings on account of dividends paid in shares of Common Stock in respect of which the Conversion Price has been adjusted, all as determined by Independent Public Accountants, whose determination shall be conclusive.

(d) For the purpose of any computation under paragraphs (b) and (c) above, the current market price per share of Common Stock at any date shall be deemed to be the average of the market values of the shares of Common Stock for the ten consecutive Business Days immediately preceding the day in question. The market value of the Common Stock for each day shall be determined as provided in Section 1703 hereof.

(e) The Company may make such reductions in the Conversion Price for any series of Convertible Securities, in addition to those required by paragraphs (a), (b) and (c) of this Section as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients.

(f) Except as herein otherwise provided, no adjustment in the Conversion Price for any series of Convertible Securities shall be made by

reason of the issuance, in exchange for cash, property or services, of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or carrying the right to purchase any of the foregoing.

(g) If the Company shall take a record of the holders of its shares of Common Stock for the purpose of entitling them to receive any dividend or any subscription or purchase rights or any distribution and shall, thereafter and before the distribution to shareholders of any such dividend, subscription or purchase rights or distribution, legally abandon its plan to pay or deliver such dividend, subscription or purchase rights or distribution, then no adjustment of the Conversion Price for any series of Convertible Securities shall be required by reason of the taking of such record.

(h) No adjustment in the Conversion Price for any series of Convertible Securities shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this paragraph (h) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article Seventeen shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(i) Whenever the Conversion Price for any series of Convertible Securities is adjusted as herein provided, the Company shall (i) forthwith place on file at the Principal Office of the Trustee an Officers' Certificate showing in detail the facts requiring such adjustment and the Conversion Price after such adjustment and shall exhibit the same from time to time to any Holder of Convertible Securities of such series desiring an inspection thereof, and (ii) cause a notice stating that such adjustment has been effected and the adjusted Conversion Price to be mailed to the Holders of Registered Convertible Securities of such series at their last addresses as they shall appear on the Security Register.

(j) The Company may delete, modify or vary any of the provisions applicable to conversion of the Convertible Securities of any series, or may add new provisions applicable thereto, all as may be contained in the Board Resolutions and Officers' Certificate or supplemental indenture establishing such series.

Section 1706. Effect of Reclassifications, Consolidations, Mergers or Sales on Conversion Privilege.

In case of any reclassification or change of outstanding shares of the class of Common Stock issuable upon conversion of the Convertible Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), or in case of any merger or consolidation of the Company with one or more other corporations (other than a merger or consolidation in which the Company is the continuing corporation and which does not result in any reclassification or change of outstanding shares of Common Stock issuable upon conversion of the Securities), or in case of the merger of the Company into another corporation, or in case of any sale or conveyance to another corporation of the property of the Company as an entirety or substantially as an entirety, the Holders of Convertible Securities of each series then Outstanding shall have the right to convert such Convertible Securities into the kind and amount of shares of capital stock or other securities and property, including cash, receivable upon such reclassifications change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock into which such Convertible Securities might have been converted immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. In any such case the Company, or such successor or purchasing corporation, as the case may be, shall execute with the Trustee one or more supplemental indentures (which shall conform to the Trust Indenture Act of 1939 as in force at the date of the execution of such supplemental indenture) containing provisions to the effect set forth above in this Section 1707 and providing further for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Seventeen; and any such adjustment which shall be approved by the Board of Directors and set forth in such supplemental indenture or supplemental indentures shall be conclusive for all purposes of this Section, and the Trustee shall not be under any responsibility to determine the correctness of any provision contained in such supplemental indenture or supplemental indentures relating to either the kind or amount of shares of stock or securities or property receivable by Holders of Securities of any series upon the conversion of their Convertible Securities after any such reclassification, change, consolidation, merger, sale or conveyance.

The above provisions of this Section 1707 shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales and conveyances.

#### Section 1707. Taxes on Conversions.

The issue of stock certificates on conversions of Convertible Securities shall be made without charge to the converting Holder of Convertible Securities for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and

delivery of shares in any name other than that of the Holder of any Registered Convertible Security converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 1708. Company to Reserve Common Stock.

The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued shares or its issued shares held in its treasury, or both, for the purpose of effecting the conversion of the Securities, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all Outstanding Securities.

If any shares of Common Stock reserved or to be reserved for the purpose of conversion of Securities hereunder require registration with or approval of any governmental authority under any Federal or State law before such shares may be validly delivered upon conversion, then the Company covenants that it will in good faith and as expeditiously as possible endeavor to secure registration or approval, as the case may be.

The Company covenants that all shares of Common Stock which may be delivered upon conversion of Convertible Securities shall upon delivery be fully paid and nonassessable by the Company and free from all taxes, liens and charges with respect to the issue or delivery thereof.

Section 1709. Disclaimer by Trustee of Responsibility for Certain Matters.

Neither the Trustee nor any conversion agent shall at any time be under any duty or responsibility to any Holder of Convertible Securities of any series to determine whether any facts exist which may require any adjustment of the Conversion Price for such series, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same, subject, however, to the provisions of Sections 315(a) through 315(b) of the Trust Indenture Act. Neither the Trustee nor any conversion agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property which may at any time be issued or delivered upon the conversion of any Convertible Security; and neither of them makes any representation with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any

failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or, subject to Sections 315(a) through 315(b) of the Trust Indenture Act, to comply with any of the covenants of the Company contained in this Article Seventeen.

Section 1710. Company to Give Notice of Certain Events.

In the event

(A) that the Company shall pay any dividend or make any distribution to the holders of shares of Common Stock otherwise than in cash charged against consolidated net earnings or retained earnings of the Company and its consolidated subsidiaries or in Common Stock; or

(B) that the Company shall offer for subscription or purchase, pro rata, to the holders of shares of Common Stock any additional shares of stock of any class or any securities convertible into or exchangeable for stock of any class; or

(C) of any reclassification or change of outstanding shares of the class of Common Stock issuable upon the conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), or of any merger or consolidation of the Company with, or merger of the Company into, another corporation (other than a merger or consolidation in which the Company is the continuing corporation and which does not result in reclassification or change of outstanding shares of Common Stock issuable upon conversion of the Securities), or of any sale or conveyance to another corporation of the property of the Company as an entirety or substantially as an entirety;

then, and in any one or more of such events, the Company will give to the Trustee and each conversion agent written notice thereof at least fifteen days prior to (i) the record date fixed with respect to any of the events specified in (A) and (B) above, and (ii) the effective date of any of the events specified in (C) above; and shall mail in the case of Registered Securities, promptly a copy of such notice to the Holders thereof at their last addresses as they shall appear upon the Security Register or, in the case of Bearer Securities, cause such notice to be published in an Authorized Newspaper. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution,



ARTICLE EIGHTEEN

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 1801. Indenture and Securities Solely Corporate Obligations.

No recourse for the payment of the principal of or premium, if any, or interest or Additional Amounts on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or, in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through 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; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Securities.

\* \* \* \* \*

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed, all as of the day and year first above written.

[SEAL] Capital One Financial Corporation

Attest:  
-----

By \_\_\_\_\_  
Name:  
Title:

[SEAL]

\_\_\_\_\_,  
as Trustee  
Attest:  
\_\_\_\_\_

By \_\_\_\_\_  
Name:  
Title:

On the \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is a \_\_\_\_\_ of Capital One Financial Corporation, a Delaware corporation, one of the persons described in and who executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such Corporation's seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto by like authority.

Notary Public

[NOTARIAL SEAL]

116  
STATE OF \_\_\_\_\_ )  
SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_,  
1996, before me personally came \_\_\_\_\_, to me known, who, being by me  
duly sworn, did depose and say that he is a \_\_\_\_\_ of  
\_\_\_\_\_, a national banking association organized  
and existing under the laws of the United States, one of the persons described  
in and who executed the foregoing instrument; that he knows the seal of said  
Corporation; that the seal affixed to said instrument is such Corporation's  
seal; that it was so affixed by authority of the Board of Directors of said  
Corporation; and that he signed his name thereto by like authority.

-----  
Notary Public

[NOTARIAL SEAL]

## CERTIFICATE OF DESIGNATIONS

of

CUMULATIVE PARTICIPATING JUNIOR PREFERRED STOCK

of

CAPITAL ONE FINANCIAL CORPORATION

(Pursuant to Section 151 of the  
Delaware General Corporation Law)

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Capital One Financial Corporation, a corporation organized and existing under the Delaware General Corporation Law (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the Delaware General Corporation Law at a meeting duly called and held on November 16, 1995:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Restated Certificate of Incorporation, the Board of Directors hereby creates a series of Cumulative Preferred Stock, par value \$0.01 per share, of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof as follows:

## CUMULATIVE PARTICIPATING JUNIOR PREFERRED STOCK

Section 1. Designation and Amount. The shares of such series shall be designated as "Cumulative Participating Junior Preferred Stock" (the "Junior Preferred Stock") and the number of shares constituting the Junior Preferred Stock shall be 1,000,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares

of Junior Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Junior Preferred Stock. The Corporation's stated capital with respect to each issued and outstanding share of Junior Preferred Stock shall be \$100.

Section 2. Dividends and Distributions.

(A) The holders of shares of Junior Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior stock, but subject to the rights of holders of any senior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first days of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Junior Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1 and (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Junior Preferred Stock. In the event the Corporation shall at any time after November 29, 1995 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise), then in each such case the amount to which holders of shares of Junior Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such

amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Junior Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Junior Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Junior Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Junior Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Junior Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Junior Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 50 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Junior Preferred Stock shall have the following voting rights:

(A) Each share of Junior Preferred Stock shall entitle the holder thereof to one hundred votes (subject to adjustment as set forth below) on all matters submitted to a vote of the stockholders of the Corporation (including, without limitation, the election of directors). In the event the Corporation shall at any time after November 29, 1995, declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise), then in each such case the number of votes to which holders of shares of Junior Preferred Stock were entitled to immediately prior to such event shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in the Restated Certificate of Incorporation, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or by law, the holders of shares of Junior Preferred Stock, the holders of shares of Common Stock and the holders of any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Junior Preferred Stock shall be in arrears in an amount equal to the full accrued dividends for six (6) or more quarterly dividend periods, whether or not consecutive, shall not have been paid or declared and a sum sufficient for the payment thereof irrevocably set aside in trust for the holders of all of such shares, the Board of Directors of the Corporation shall promptly take all necessary actions to increase the authorized number of directors of the Corporation by one (1) and the holders of the shares of the Junior Preferred Stock then outstanding shall be entitled (by series, voting as a single class) to elect one (1)



person director to the Board of Directors of the Corporation (such right to elect one (1) director being hereinafter sometimes referred to as the "special voting rights"), each outstanding share having such right being entitled for such purpose to one vote; provided, however, that at such time as the arrearage in payment of dividends which gave rise to the exercise of the special voting rights has been cured with regard to the Junior Preferred Stock by waiver or payment of all accrued dividends, the right of the holders of such shares so to vote as provided in this paragraph (C)(i) of this Section 3 shall cease (subject to renewal from time to time upon the same terms and conditions) and the term of office of the person who is at that time a director elected by such holders shall terminate and the number of directors of the Corporation shall be automatically reduced by one (1).

(ii) At any time after the special voting rights shall have become vested in the holders of the shares of the Junior Preferred Stock as provided in paragraph (C)(i) of this Section 3, the Secretary of the Corporation, as promptly as possible but in any event within twenty (20) days after receipt of the written request of the holders of 10% of the shares of the Junior Preferred Stock then outstanding, addressed to the Corporation at its principal office, shall call a special meeting of the holders of the shares of the Junior Preferred Stock for the purpose of electing such additional director, such meeting to be held at any place as provided by the Bylaws of the Corporation for meetings of the Corporation's stockholders, and upon not less than ten (10) nor more than twenty (20) days notice. If such meeting shall not be so called within twenty (20) days after receipt of the request by the Secretary of the Corporation, then the holders of 10% of the shares of the Junior Preferred Stock then outstanding may, by written notice to the Secretary of the Corporation, designate any person to call such meeting, and the person so designated may call such meeting, at any such place as provided above and upon not less than ten (10) nor more than twenty (20) days notice and for that purpose shall have access to the stockholder record books of the Corporation. No such special meeting of the holders of the shares of the Junior Preferred Stock and no adjournment thereof shall be held on a date later than thirty (30) days before the annual meeting of stockholders of the Corporation. At any meeting so

called or at any annual meeting held at any time when the special voting rights are in effect, the holders of a majority of the shares of the Junior Preferred Stock then outstanding, present in person or by proxy, shall be sufficient to constitute a quorum for the election of such additional director, and such additional director, together with any and all other directors who are then members of the Board of Directors, shall constitute the duly elected directors of the Corporation.

(iii) With respect to a vacancy arising in the directorship referred to in paragraph (C)(i) of this Section 3 at any time when the special voting rights are in effect pursuant to paragraph (C)(i) of this Section 3, upon the written request of the holders of 10% of the shares of the Junior Preferred Stock then outstanding, addressed to the Corporation at its principal office, the Secretary of the Corporation shall give notice of a special meeting of holders of the shares of the Junior Preferred Stock of the election of a director to fill such vacancy caused by the death, resignation or other inability to serve as a director elected by such holders, to be held not less than ten (10) nor more than twenty (20) days following receipt by the Secretary of the Corporation of such written request. So long as special voting rights are in effect pursuant to paragraph (i) of this Section 3(c), any director who shall have been so elected by the holders of the Junior Preferred Stock may be removed at any time, either with or without cause, only by the affirmative vote of the holders of the shares at the time entitled to cast a majority of the votes entitled to be cast for the election of such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders.

(D) Except as set forth herein, or as otherwise provided by the Restated Certificate of Incorporation or by law, holders of Junior Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(E) Holders of Junior Preferred Stock shall be entitled to such notice of each meeting of stockholders as is furnished to the holders of Common Stock with respect to such meeting.

Section 4. Certain Restrictions.

(A) Subject to the provisions of the Restated Certificate of Incorporation, whenever quarterly dividends or other dividends or distributions payable on the Junior Preferred Stock as provided in Section 2 are in arrears as of any Quarterly Dividend Payment Date, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Junior Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Preferred Stock, except dividends paid ratably on the Junior Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends and upon dissolution, liquidation or winding up) to the Junior Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Junior Preferred Stock, or any shares of stock ranking on a parity with the Junior Preferred Stock, except in accordance with the terms of the

Restated Certificate of Incorporation and with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Junior Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Restated Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Preferred Stock unless, prior thereto, the holders of shares of Junior Preferred Stock shall have received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Junior Preferred Liquidation Preference"). Following the payment of the full amount of the Junior Preferred Liquidation Preference, no additional distributions shall be made to the holders of shares of Junior Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient

obtained by dividing (i) the Junior Preferred Liquidation Preference by (ii) 100 (as appropriately adjusted as set forth in subparagraph (C) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii) immediately above being referred to as the "Adjustment Number"). Following the payment of the full amount of the Junior Preferred Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Junior Preferred Stock and Common Stock, respectively, holders of Junior Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to one (1) with respect to such Junior Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Junior Preferred Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Junior Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after November 29, 1995, (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation should enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Junior Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after November 29, 1995 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Junior Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. Ranking. The Junior Preferred Stock shall rank senior, as to dividends and upon liquidation, dissolution or winding up, to the Common Stock, and junior, as to dividends and upon liquidation, dissolution or winding up, to (a) any other class of capital stock of the Corporation unless the terms of such class shall expressly provide otherwise, and (b), to the extent permitted by the Restated Certificate of Incorporation, all other series of Preferred Stock issued by the Corporation (and, if not so permitted, on a parity with all such other series).

Section 9. No Redemption. The shares of Junior Preferred Stock shall not be redeemable.

Section 10. Fractional Shares. The Junior Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of shares of Junior Preferred Stock.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its Chief Executive Officer and attested by its Secretary as of the 16th day of November, 1995.

-----  
Chief Executive Officer

Attest:

- -----  
Secretary

CAPITAL ONE FINANCIAL CORPORATION  
2980 Fairview Park Drive  
Suite 1300  
Falls Church, VA 22042

September 19, 1996

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Ladies and Gentlemen:

I am General Counsel of Capital One Financial Corporation, a Delaware corporation (the "Company"), and am delivering this opinion in connection with the Company's Amendment No. 1 to the Registration Statement on Form S-3 (the "Registration Statement") filed with the Securities Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Act"). The Registration Statement relates to \$200,000,000 in maximum aggregate offering price of (i) debt securities ("Debt Securities"), which may be either senior unsecured debt securities ("Senior Debt Securities") or subordinated unsecured debt securities ("Subordinated Debt Securities"), (ii) shares of preferred stock, par value \$.01 per share ("Preferred Stock"), which may be issued in the form of depositary shares evidenced by depositary receipts ("Depositary Shares"), and (iii) shares of common stock, par value \$0.01 per share (the "Common Stock").

In arriving at the opinions expressed below, I have reviewed the originals or copies, certified or otherwise identified to my satisfaction, of such corporate records, agreements, documents and other instruments, and of certificates of public officials, officers and representatives of the Company and have made such inquiries of such officers and representatives, and I have made such investigations of law, as I have deemed appropriate as the basis for the opinions hereinafter set forth.

Based upon the foregoing and subject to the qualifications stated herein, I am of the opinion that:



(1) The Company has authority pursuant to its Restated Certificate of Incorporation to issue the shares of Common Stock to be registered under the Registration Statement and (a) upon the adoption by the Board of Directors of a resolution in form and content required by applicable law, (b) upon compliance with the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable and (c) upon issuance and delivery of and payment for such shares in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, such shares of Common Stock will be legally issued, fully paid and nonassessable.

(2) The Company has authority pursuant to its Restated Certificate of Incorporation to issue the shares of Preferred Stock to be registered under the Registration Statement and (a) upon the adoption by the Board of Directors of a resolution in form and content required by applicable law, (b) upon compliance with the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable, (c) upon the adoption by the Company's Board of Directors and the due execution and filing by the Company with the Delaware Secretary of State of the Certificate of Designations establishing the preferences, limitations, and relative voting and other rights of each series of Preferred Stock prior to issuance thereof and (d) upon issuance and delivery of and payment for such shares in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, such shares of Preferred Stock will be legally issued, fully paid and nonassessable.

(3) The Company has authority pursuant to its Restated Certificate of Incorporation to issue Depositary Shares to be registered under the Registration Statement and when (a) a deposit agreement substantially as described in the Registration Statement has been duly executed and delivered by the Company and a depository, (b) the depository receipts representing the Depositary Shares in the form contemplated and authorized by such deposit agreement have been duly executed and delivered by such depository and delivered to and paid for by the purchasers thereof in the manner contemplated by the Registration Statement and/or the applicable prospectus supplement, (c) all corporate action necessary for the issuance of such Depositary Shares and the underlying Preferred Stock has been taken (including but not limited to action establishing the preferences, limitations, and relative voting and other rights of such Preferred Stock prior to issuance thereof) and (d) the applicable provisions of the Act and such state "blue sky" or securities laws as may be applicable have been complied with, such Depositary Shares will be legally issued and will entitle the holders thereof to the rights specified in the deposit agreement relating to such Depositary Shares.

(4) The Company has authority to issue the Debt Securities to be registered under the Registration Statement and when (a) the applicable provisions of the

Act and such state "blue sky" or securities laws as may be applicable have been complied with and (b) the Debt Securities have been issued and delivered for value as contemplated by the Registration Statement and/or the applicable prospectus supplement, such Debt Securities will be legally issued and will be binding obligations of the Company.

To the extent that the obligations of the Company under the deposit agreement or the obligations of the Company as obligor under an indenture may be dependent upon such matters, I have assumed for purposes of this opinion (i) that the applicable depositary or trustee, as the case may be, is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to engage in the activities contemplated by the applicable deposit agreement or indenture, as the case may be, (ii) that such deposit agreement or indenture, as the case may be, has been duly authorized, executed and delivered by and constitutes the legal, valid and binding obligation of such depositary or trustee, as the case may be, enforceable in accordance with its respective terms, (iii) that such depositary or trustee, as the case may be, is in compliance, generally and with respect to acting as a depositary or trustee, respectively, under the applicable deposit agreement or indenture, with all applicable laws and regulations and (iv) that such depositary or trustee, as the case may be, has the requisite organizational and legal power and authority to perform its obligations under the applicable deposit agreement or indenture, as the case may be.

The opinions set forth above are subject to the following exceptions, limitations and qualifications: (i) the effect of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors; (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or law, in the discretion of the court before which any proceeding therefor may be brought; (iii) the unenforceability under certain circumstances under law or court decisions of provisions providing for the indemnification of or contribution to a party with respect to a liability where such indemnification or contribution is contrary to public policy; (iv) I express no opinion concerning the enforceability of the waiver of rights or defenses contained in Section 514 of the Indenture; and (v) I express no opinion with respect to whether acceleration of Debt Securities may affect the collectibility of any portion of the stated principal amount thereof which might be determined to constitute unearned interest thereon.

I am furnishing this opinion letter in connection with the Company's registration of the Debt Securities, the Preferred Stock, including the Depositary Shares, and the Common Stock under the Registration Statement. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose.

Very truly yours,

/s/ JOHN G. FINNERAN, JR.

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John G. Finneran, Jr.

CAPITAL ONE FINANCIAL CORPORATION  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
 FOR THE SIX MONTHS ENDED JUNE 30, 1996 AND THE  
 YEARS ENDED DECEMBER 31, 1995, 1994, 1993, 1992, AND 1991  
 (dollars in thousands)

		SIX MONTHS ENDED JUNE 30		YEAR ENDED DECEMBER 31, 1996			
		1996	1995	1994	1993	1992	1991
Earnings	\$	120,946	\$ 197,731	\$ 146,827	\$ 170,854	\$ 48,864	\$ 53,482
Fixed charges		127,069	253,446	94,816	69,511	30,938	43,739
		248,015	451,177	241,643	240,365	79,802	97,221
Fixed charges		127,069	253,446	94,816	69,511	30,938	43,739
Ratio		1.95	1.78	2.55	3.46	2.58	2.22

## SELECTED FINANCIAL AND OPERATING DATA

	Year Ended December 31						
(dollars in thousands, except per share data)	1995	1994(1)	1993(1)	1992(1)	1991(1)	1990(1)	Five-Year Compound Growth Rate
INCOME STATEMENT DATA:							
Interest income	\$ 457,409	\$ 258,672	\$ 259,857	\$ 120,630	\$ 111,195	\$ 169,943	21.90%
Interest expense	249,396	93,695	67,994	29,888	41,797	76,347	26.71
Net interest income	208,013	164,977	191,863	90,742	69,398	93,596	17.32
Provision for loan losses	65,895	30,727	34,030	55,012	40,891	22,483	23.99
Net interest income after provision for loan losses	142,118	134,250	157,833	35,730	28,507	71,113	14.85
Non-interest income	553,043	396,902	194,825	121,642	111,017	71,673	50.48
Non-interest expense(2)	497,430	384,325	181,804	108,508	86,042	90,648	40.56
Income before income taxes	197,731	146,827	170,854	48,864	53,482	52,138	30.55
Income taxes	71,220	51,564	60,369	16,614	18,184	17,727	32.07
Net income	\$ 126,511	\$ 95,263	\$ 110,485	\$ 32,250	\$ 35,298	\$ 34,411	29.74
Dividend payout ratio	12.55%						
PER COMMON SHARE:							
Net income(3)	\$ 1.90	\$ 1.44	\$ 1.67	\$ .49	\$ .53	\$ .52	
Book value at year-end	9.05	7.18					
Average common and common equivalent shares outstanding(3)	66,592,750	66,067,250					
SELECTED AVERAGE BALANCES:							
Credit card loans held for securitization	\$ 402,602	\$ 432,581	\$ 393,835		\$ 92,055	\$ 1,096	225.85
Credit card loans	2,537,606	1,854,103	1,819,543	\$ 772,742	581,432	1,023,518	19.91
Allowance for loan losses	(69,939)	(66,434)	(59,754)	(43,767)	(23,154)	(30,042)	18.41
Securities	949,923	62,626					
Total assets	4,436,055	2,629,920	2,289,043	827,093	731,881	1,045,272	33.52
Deposits	769,688	36,248					
Other borrowings	2,952,162	2,287,474	2,148,155	762,762	675,732	990,743	24.40
Stockholders'/Division equity(4)	543,364	239,616	113,815	51,454	46,807	40,550	68.04
SELECTED YEAR-END BALANCES:							
Credit card loans held for securitization	\$ 400,000					\$ 400,000	
Credit card loans	2,521,679	\$ 2,228,445	\$1,862,744	\$1,304,560	\$ 767,448	372,601	
Allowance for loan losses	(72,000)	(68,516)	(63,516)	(55,993)	(31,541)	(20,301)	
Securities	1,233,796	412,070					
Total assets	4,759,321	3,091,980	1,991,207	1,351,802	837,240	818,586	
Deposits	696,037	452,201					
Other borrowings	3,301,672	2,062,688	1,791,464	1,266,507	778,082	763,997	
Stockholders'/Division equity(4)	599,191	474,557	168,879	69,294	51,586	45,045	
MANAGED LOAN DATA:							
Reported loans (average)	\$ 2,940,208	\$ 2,286,684	\$2,213,378	\$ 772,742	\$ 673,487	\$1,024,614	23.47
Securitized loans (average)	6,149,070	3,910,739	1,052,187	680,000	638,531	141,097	112.74
Total loans (average)	9,089,278	6,197,423	3,265,565	1,452,742	1,312,018	1,165,711	50.80
Loan interest income	1,192,100	733,659	432,521	249,082	227,165	190,693	45.69
Year-end loans	10,445,480	7,378,455	4,832,400	1,984,560	1,447,448	1,272,601	52.35
Year-end total accounts (000's)	6,149	5,049	3,118	1,672	1,261	1,019	43.26
Loan yield	13.12%	11.84%	13.24%	17.15%	17.31%	16.36%	
Loan delinquency rate(5)	4.20	2.95	2.39	5.30	8.18	3.30	
Loan net charge-off rate(6)	2.25	1.48	2.09	5.18	5.61	3.83	
OPERATING RATIOS:							
Net income to average assets	2.85%	3.62%	4.83%	3.90%	4.82%	3.29%	
Net income to average equity	23.28	39.76	97.07	62.68	75.41	84.86	
Equity to assets (average)	12.25	9.11	4.97	6.22	6.40	3.88	
Net interest margin -- managed	6.28	6.90	9.55	12.63	10.70	8.71	
Allowance for loan losses to loans at year-end(7)	2.85	3.07	3.41	4.29	4.11	5.45	

(1) The Company's results prior to November 22, 1994, reflect operations as a division of Signet Bank/Virginia.

(2) Non-interest expense includes a \$49.0 million (\$31.9 million after tax) nonrecurring charge for computer services contract termination expense in 1994.

(3) Assumes 66,067,250 shares outstanding prior to November 22, 1994.

(4) Division equity reflects an allocation of capital to Capital One Bank as a division for purposes of preparation of the financial statements of the Company. Such allocation is not subject to regulatory minimums.

(5) Delinquencies, except for 1990, represent credit card loans which were 30 days or more past-due at year-end. Delinquencies for 1990 represent credit card loans which were 60 days or more past-due at year-end.

(6) Net charge-offs reflect actual principal amounts charged off less recoveries.

(7) Excludes credit card loans held for securitization.



## INTRODUCTION

Capital One Financial Corporation (the "Company") is a financial services company that offers credit card products as its primary business through its wholly owned subsidiary, Capital One Bank (the "Bank"). The Company is one of the oldest continually operating bank card issuers in the United States, having commenced operations in 1953, the same year as the formation of what is now MasterCard International. At December 31, 1995, the Bank has 6.1 million credit card customers and \$10.4 billion in managed loans outstanding and is one of the largest providers of MasterCard and Visa credit cards in the United States.

Prior to 1988, the Company's credit card operations were regionally oriented, focused primarily in the area served by Signet Banking Corporation's ("Signet") bank branches in Virginia, Maryland and Washington, D.C. In 1988, the Company began developing its information-based strategy, enabling it to target profitable and creditworthy segments of the bank card market and to expand nationally.

Prior to November 1994, the Company operated as the credit card division of Signet Bank/Virginia ("Signet/ Virginia"), a wholly owned subsidiary of Signet. On November 22, 1994, Signet/Virginia contributed designated assets and liabilities of its credit card division and approximately \$358 million of equity capital into a newly chartered, limited purpose Virginia state Federal Reserve member credit card bank, Capital One Bank, then a wholly owned subsidiary of Signet/Virginia (the "Separation"). Following the contribution of assets and the assumption of liabilities, Signet/Virginia immediately distributed the capital stock of Capital One Bank to Signet which, in turn, contributed such stock to the Company, a newly formed subsidiary of Signet.

On the same day, the Company issued 7,125,000 shares of its common stock in an initial public offering (the "IPO"), the net proceeds of which were approximately \$102 million, and 464,400 shares of restricted stock (together representing approximately 11.5% of the Company). Signet held the remaining 58,477,850, or approximately 88.5%, of the shares of the Company's common stock. On January 24, 1995, the Board of Directors of Signet approved the distribution of its shares, and on the close of business on February 28, 1995, transferred its remaining interest in the Company directly to Signet stockholders of record as of February 10, 1995 (the "Distribution").

The historic financial statements for the Company for the periods prior to November 22, 1994, have been prepared based upon the transfer of assets and assumption of liabilities contemplated by an agreement entered into among the Company, Signet and Signet/Virginia at the time of the Separation (the "Separation Agreement"). Prior to the Separation, the operations of the Company were conducted as a division within Signet/Virginia, to which Signet and its various subsidiaries had provided significant financial and operational support.

At the time of the IPO, the Company entered into several interim services agreements with Signet. These agreements provide, at estimated market rates, certain ongoing operational support in areas such as general ledger, investments and human resources. At December 31, 1995, many of these services are now performed by the Company.

The Company's profitability is affected by the interest margin on interest-earning assets, cardholder usage patterns, credit quality, the level of solicitation (marketing) expenses and operating efficiency. The Company's revenues consist primarily of interest income on revolving credit card loans, securities and non-interest income consisting of credit card servicing income and credit card fees, which include annual membership, interchange, cash advance, over limit, past-due and other credit card fee income. The Company's primary expenses are the costs of funding assets, credit losses and operating expenses, including salaries and associate benefits, solicitation expenses, processing expenses and income taxes.

Significant marketing expenses to implement the Company's new product strategies (e.g., printing, credit bureau costs and postage) are incurred prior to the acquisition of new accounts while the resulting revenues are recognized over the life of the acquired accounts. Revenues recognized are a function of the response rate of the initial marketing program, card usage and attrition patterns, credit quality of accounts, product pricing, effectiveness of account management programs and operating costs.

## PRO FORMA

Due to the significance of changes in funding and other operating issues, the following discussion and Table 1 present the Company as if it had been an independently funded stand-alone organization for the full year in 1994. The pro forma presentation is the baseline from which management compares performance to the year ended December 31, 1995. Following this discussion of pro forma results is a more complete analysis of the historic financial statements contained elsewhere in this report.

As a division of Signet/Virginia, the Company was subject to many decisions made by Signet on a consolidated level. Most notably its asset/liability management was established at the corporate rather than divisional level. As a result, the Company's historic operating results reflect a certain level of unhedged interest rate exposure prior to November 22, 1994.

The Separation and subsequent Distribution also resulted in a significant reorganization of the equity and funding of the Company. Accordingly, certain costs of operating as a public stand-alone entity rather

than as a division of a larger organization resulted in incrementally higher expenses than are reflected on a historic basis. An estimate of these effects was taken into consideration in preparing pro forma statements of income for 1994 in Table 1.



3  
TABLE 1 -- COMPARISON OF 1995 ACTUAL TO 1994 PRO FORMA NET INCOME

(dollars in thousands)	Year Ended December 31	
	1995	1994
	(ACTUAL)	(Pro Forma)
Interest income:		
Credit card loans, including fees	\$351,786	\$214,100
Credit card loans held for securitization	45,868	41,015
Federal funds sold	26,832	2,483
Other	32,923	28,495
Total interest income	457,409	286,093
Interest expense:		
Deposits	49,547	2,364
Federal funds purchased	45,878	2,927
Bank facility	20,173	152,269
Bank notes	133,635	53
Affiliate borrowings	163	476
Total interest expense	249,396	158,089
Net interest income	208,013	128,004
Provision for loan losses	65,895	30,727
Net interest income after provision for loan losses	142,118	97,277
Non-interest income	553,043	399,357
Non-interest expense(1)	497,430	391,140
Income before income taxes	197,731	105,494
Income taxes	71,220	37,097
Net income	\$126,511	\$ 68,397

(1) Non-interest expense includes a \$49.0 million (\$31.9 million after-tax) nonrecurring charge for computer services contract termination expense in 1994.

The pro forma information does not purport to represent what the results of 1994 operations would actually have been if the adjustments described below had occurred in 1994 or to be indicative of the future results of operations or financial position of the Company. The adjustments described below are based upon available information and on assumptions that the Company believes are reasonable.

Pro forma interest income includes, for the period prior to the Separation, interest income earned on a hypothetical portfolio of high-quality liquid securities that the Company would have purchased in order to provide adequate liquidity and to meet its ongoing cash needs. The interest expense associated with funding the liquid securities also includes and is based on the Company's 1994 bank facility (see discussion under "Funding") and is assumed to have a modestly negative impact on net interest income for the periods presented. Additionally, pro forma results reflect the replacement of the affiliate borrowing liability solely with the 1994 bank facility. The bank facility is assumed to bear interest at the one-month London Interbank Offered Rate ("LIBOR") plus 85 basis points (including the amortization of debt issuance costs). The assumed average rate was 5.22% for the period from January 1 through November 22, 1994.

Pro forma results also include an increase in interest expense, non-interest (rental) income and non-interest (depreciation) expense associated with the Company's ownership of additional office buildings. Pursuant to the Separation Agreement, these buildings were transferred to the Company at net book value upon consummation of the Separation, portions of which were leased back to Signet/Virginia, until the Company assumes full occupancy.

Pro forma results also reflect the estimated additional administrative expenses (executive salaries, professional services, business taxes and other expenses) incurred by the Company as a publicly-held, stand-alone entity. Pro forma results reflect the net tax effect, at the statutory Federal income tax rate of 35%.

Actual net income for the year ended December 31, 1995, of \$126.5 million increased \$58.1 million, or 85%, over pro forma net income of \$68.4 million in 1994. The increase in net income was partially attributable to \$31.9 million (after-tax) expense in 1994 for settlement costs to terminate a long-term data processing services contract. Net interest income also increased \$80.0 million, or 63%, to \$208.0 million in 1995 from \$128.0 million in 1994. This rise in net interest income was due to a 31% increase in interest-earning assets and an increase in net interest margin to 5.35% in 1995 from 4.30% in 1994. These increases were partially offset by increases in non-interest expenses as a result of balance and account growth discussed further below. Remaining income and expense fluctuations are consistent with those noted on a historic basis below.

## SUMMARY OF HISTORIC RESULTS OF OPERATIONS

The following discussion provides a summary of 1995 results compared to the historic results of the Company which, prior to November 22, 1994, are as a division of Signet. Each component is discussed in further detail in subsequent sections of this analysis.

YEAR ENDED DECEMBER 31, 1995  
COMPARED TO YEAR ENDED DECEMBER 31, 1994

Net income for the year ended December 31, 1995, of \$126.5 million increased \$31.2 million, or 33%, over net income of \$95.3 million in 1994. The increase in net income was partially attributable to the \$31.9 million (after-tax) nonrecurring charge for 1994 settlement costs to terminate a long-term data processing services contract.

Other factors affecting net income include the increase in net interest income of \$43.0 million, or 26%, the result of a 66% increase in average interest-earning assets offset by a decrease in the net interest margin to 5.35% from 7.02%. The decrease in net interest margin reflects overall increases in average short-term market interest rates plus the absence of a stand-alone hedging program prior to the IPO. The provision for loan losses increased \$35.2 million, or 114%, as average reported loans increased 37% and the net charge-off rate increased to 2.03% in 1995 from 1.13% in 1994 as the average age of the accounts increased (generally referred to as "seasoning"). Non-interest income increased \$156.1 million, or 39%, primarily due to the increase in average managed loans including those securitized. Increases in solicitation costs of \$45.9 million, or 46%, and other non-interest expenses (excluding the contract termination expense of \$49.0 million) of \$116.2 million, or 50%, reflect the increase in marketing investment in existing and new product opportunities and the cost of operations to manage the growth in credit card accounts. Average managed loans grew 47%, to \$9.1 billion from \$6.2 billion, as a result of the success of the Company's solicitation and account management strategies.

YEAR ENDED DECEMBER 31, 1994  
COMPARED TO YEAR ENDED DECEMBER 31, 1993

Net income for the year ended December 31, 1994, of \$95.3 million decreased \$15.2 million, or 14%, over net income of \$110.5 million in 1993. The decrease in net income was partially attributable to the \$31.9 million (after-tax) in contract termination costs previously mentioned.

Other factors reducing net income include the increase in funding costs associated with reported assets as the average interest rate on borrowings increased to 4.03% in 1994 from 3.17% in 1993. Increases in credit card solicitation costs of \$45.1 million, or 81%, and other non-interest expenses (excluding the contract termination expense of \$49.0 million) of \$108.4 million, or 86%, reflect the increase in marketing investment in existing and new product opportunities and the cost of operations to manage the growth in credit card accounts.

Increased funding costs and non-interest expenses were offset in part by the growth in non-interest income related to increased securitizations and the increase in the loan portfolio. Additionally, lower loss provisions, decreasing to \$30.7 million from \$34.0 million, or 10%, reflect the results of more recent solicitation programs.

## MANAGED LOAN PORTFOLIO

The Company analyzes its financial performance on a managed loan portfolio basis. Managed loan data adjusts the income statement and balance sheet to add back the effect of securitizing loans. The Company also evaluates its interest rate exposure on a managed portfolio basis.

In originating its loan portfolio in recent years, the Company has pursued a low introductory interest rate strategy with accounts repricing to higher rates after 6 to 16 months from the date of origination. The amount of repricing is actively managed in an effort to maximize return on investment at the customer level reflecting the risk and expected performance of the account. Accounts also may be repriced upwards or downwards based on customer performance. Industry competitors have continuously solicited the Company's customers with similar low rate introductory strategies. Management believes that these competitive pressures have and will continue to put additional pressure on low introductory rate strategies.

Partially in response to competitive pressures in 1995, the Company began to shift a significant amount of its solicitation expense to other product opportunities. These products do not have the immediate impact on managed loan balances of the introductory rate product but typically consist of lower credit limit accounts which build balances over time. As was experienced in the fourth quarter of 1995, management expects aggregate loan balance growth to continue to slow or even decline as a result of this shift. However, net new account growth is expected to continue. Actual growth may vary and is subject to such factors as competition, market interest rates, consumer credit quality and other external and internal circumstances.

The Company's managed loan portfolio is comprised of credit card loans, credit card loans held for securitization and securitized credit card loans. Securitized loans are not assets of the Company and, therefore, are not shown on the balance sheet. Reported loans consist of credit card loans and credit card loans held for securitization and excludes securitized loans. Table 2 summarizes the Company's managed loan portfolio.



TABLE 2 -- MANAGED LOAN PORTFOLIO

(dollars in thousands)	Year Ended December 31				
	1995	1994	1993	1992	1991
YEAR-END BALANCES:					
On-balance sheet loans held for securitization	\$ 400,000				
On-balance sheet credit card loans	2,521,679	\$2,228,455	\$1,862,744	\$1,304,560	\$ 767,448
Securitized credit card loans	7,523,801	5,150,000	2,969,656	680,000	680,000
Total year-end managed loan portfolio	\$10,445,480	\$7,378,455	\$4,832,400	\$1,984,560	\$1,447,448
AVERAGE BALANCES:					
On-balance sheet loans held for securitization	\$ 402,602	\$ 432,581	\$ 393,835		\$ 92,055
On-balance sheet credit card loans	2,537,606	1,854,103	1,819,543	\$ 772,742	581,432
Securitized credit card loans	6,149,070	3,910,739	1,052,187	680,000	638,531
Total average managed loan portfolio	\$ 9,089,278	\$6,197,423	\$3,265,565	\$1,452,742	\$1,312,018

The Company's reported loan portfolio at December 31, 1995, consists of 41% fixed and 59% variable interest rate loans. At December 31, 1995, the managed loan portfolio consists of 36% fixed and 64% variable interest rate loans.

Since 1990, the Company has actively engaged in credit card loan securitization transactions which are treated as sales under generally accepted accounting principles. For securitized loans, amounts that would previously have been reported as interest income, interest expense, credit card service charges and provision for loan losses are instead included in non-interest income as credit card servicing income. Because credit losses are absorbed against credit card servicing income over the life of these transactions, such income may vary depending upon the credit performance of the securitized loans. However, exposure to credit losses on the securitized loans is contractually limited to the servicing income cash flows.

A securitization generally involves the transfer by the Company of the receivables generated by a pool of credit card accounts to an entity created for the securitization, generally a trust. Certificates issued (\$7.5 billion at December 31, 1995) by the trust represent undivided ownership interests in those receivables transferred into the trust. The credit quality of the receivables is supported by credit enhancement, which may be in the form of a letter of credit, a cash collateral account, or a subordinated interest in the receivables in the pool. The securitization results in the removal of the receivables from the Company's balance sheet for financial and regulatory accounting purposes.

The receivables transferred to a securitization pool include those outstanding in the selected accounts at the time the trust is formed and those arising under the accounts from time to time until termination of the trust. The Company also transfers to the trust the cash collected in payment of the receivables, interest and fees. All proceeds of the receivables, the annual fees, cash advance fees, past-due fees, and similar fees received or to be received for each account are similarly transferred to the trust.

Certificates representing participation interests in the pool are sold to the public through an underwritten offering or to private investors in private placement transactions. The Company receives the proceeds of the sale. The amount of receivables transferred to the trust exceeds the initial principal amount of the certificates issued by the trust to investors. The Company retains an interest in the trust in an amount equal to the amount of the receivables in excess of the principal balance of the certificates. The Company's interest in the trust varies as the amount of the excess receivables in the trust fluctuates as the credit cards accountholders make principal payments and incur new charges on the selected accounts.

The Company acts as servicing agent and receives loan servicing fees generally equal to two percent per annum of the securitized receivables. As servicing agent, the Company continues to provide customer service, to collect past-due accounts and to provide all other services typically performed for its customers. Accordingly, its relationship with its credit card customer is not affected by the securitization.

The certificateholders are entitled to receive periodic interest payments at a fixed rate or a floating rate. The fixed interest rate is generally substantially below the yield on the pool of receivables. Generally, the Company's floating rate issuances are based on LIBOR. Amounts collected in excess of that needed to pay the rate of interest are used to pay the credit enhancement fee and servicing fee and are available to absorb the investors' share of credit losses.

Certificateholders in the Company's securitization program are generally entitled to receive principal payments



MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (CONTINUED)

either through monthly payments during an amortization period or in one lump sum after an accumulation period. Amortization may begin sooner in certain circumstances, including if the annualized portfolio yield (consisting, generally, of interest, annual fees and other credit card fees) for a three month period drops below the sum of the certificate rate payable to investors, loan servicing fees and net credit losses during the period or certain other events occur.

Prior to the commencement of the amortization or accumulation period, all principal payments received on the trust receivables are reinvested in new receivables of the selected accounts for the benefit of the trust. During the amortization period, the investors' share of principal payments are paid to the certificateholders until they are paid in full. During the accumulation period, the investors' share of principal payments are paid into a principal funding account designed to accumulate amounts so that the certificate can be paid in full on the expected final payment date. The trust continues in existence until all certificateholders of all series are repaid the principal amounts of their certificates, at which time all remaining receivables and funds held in the trust are reassigned to the Company.

MANAGED REVENUES\*  
(in millions)

'93	'94	'95
\$429	\$628	\$906

\*Net interest income and non-interest income on a managed basis.

Table 3 indicates the impact of the credit card securitizations on the income statement, average assets, return on assets, yield and net interest margin for the periods presented. The Company intends to continue to securitize credit card loans.

TABLE 3 -- IMPACT OF CREDIT CARD SECURITIZATIONS

(dollars in thousands)	Year Ended December 31		
	1995	1994	1993
STATEMENT OF INCOME (AS REPORTED):			
Net interest income	\$ 208,013	\$ 164,977	\$ 191,863
Provision for loan losses	65,895	30,727	34,030
Non-interest income	553,043	396,902	194,825
Non-interest expense	497,430	384,325	181,804
Income before income taxes	\$ 197,731	\$ 146,827	\$ 170,854
ADJUSTMENTS FOR SECURITIZATIONS:			
Net interest income	\$ 421,983	\$ 267,201	\$ 119,995
Provision for loan losses	145,209	65,921	42,025
Non-interest income	(276,774)	(201,280)	(77,970)
Non-interest expense			
Income before income taxes	\$ --	\$ --	\$ --
MANAGED STATEMENT OF INCOME (AS ADJUSTED):			
Net interest income	\$ 629,996	\$ 432,178	\$ 311,858
Provision for loan losses	211,104	96,648	76,055
Non-interest income	276,269	195,622	116,855
Non-interest expense	497,430	384,325	181,804
Income before income taxes	\$ 197,731	\$ 146,827	\$ 170,854
OPERATING DATA AND RATIOS:			
As reported:			
Average interest-earning assets	\$ 3,890,131	\$2,349,310	\$2,213,378
Return on average assets	2.85%	3.62%	4.83%
Net interest margin(1)	5.35	7.02	8.67
Including securitized credit cards:			
Average interest-earning assets	\$10,039,201	\$6,260,049	\$3,265,565
Return on average assets	1.20%	1.46%	3.31%
Net interest margin(1)	6.28	6.90	9.55
Yield on managed portfolio	13.12	11.84	13.24

(1) Net interest margin is equal to net interest income divided by average interest-earning assets.



## NET INTEREST INCOME

Net interest income is interest earned from the Company's loans and securities less interest expense on borrowings, including certificates of deposit in denominations of \$100,000 or greater ("large denomination CD's"), federal funds purchased, bank facility borrowings and bank notes. Prior to the Separation, interest expense represented amounts allocated to the Company by Signet to fund loans and other assets. The interest expense paid on the allocated borrowings by the Company was based on average historic rates paid by Signet. See "Funding" for a detailed description of the funding allocations.

Net interest income for the year ended December 31, 1995, increased \$43.0 million, or 26%, to \$208.0 million from \$165.0 million in 1994. This increase is the result of a 66% increase in the average balance of, and a 75 basis point increase in yield on, interest-earning assets offset by significant increases in the cost of funds. Net interest margin decreased 167 basis points to 5.35% in 1995 from 7.02% in 1994 as the yield increase on interest-earning assets to 11.76% from 11.01% was more than offset by a cost of funds increase of 267 basis points to 6.70% from 4.03%.

The average yield on loans increased 236 basis points to 13.52% in 1995 from 11.16% in 1994. This increase primarily reflects the repricing of introductory rate loans to higher rates in accordance with their respective term and the repricing of variable rate loans to higher rates based on the increase in average short-term market interest rates. The net interest margin was also impacted by an increased percentage of lower yielding securities (24% of average interest-earning assets in 1995 versus 3% in 1994). The increase in the cost of funds reflects the increase in average short-term market interest rates and incrementally higher market cost of funds paid by the Company on a stand-alone basis after the Separation versus the amounts allocated by Signet in 1994.

Net interest income for the year ended December 31, 1994, decreased \$26.9 million, or 14%, from the prior year. Net interest income decreased as a result of the decline in the yield on interest-earning assets and the higher cost of funds. The overall yield on interest-earning assets decreased during the year by 73 basis points to 11.01% from 11.74% primarily due to the low introductory rates on newly originated accounts. Loan yields decreased to 11.16% from 11.74% for the same period. Additionally, the Company had net additions of \$412.1 million in temporary investments and securities after the Separation. These instruments yielded 5.68% on an annualized basis.

Average rates paid on borrowed funds rose 86 basis points during 1994 versus 1993 due to overall interest rate increases and the incrementally higher cost of funds paid by the Company on a stand-alone basis after the Separation.

Table 4 provides average balance sheet data, an analysis of net interest income, net interest spread (the difference between the yield on interest-earning assets and the cost of interest-bearing liabilities) and net interest margin for each of the years ended December 31, 1995, 1994 and 1993.



MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (CONTINUED)

TABLE 4 -- STATEMENT OF AVERAGE BALANCES, INCOME AND EXPENSE, YIELDS AND RATES

(dollars in thousands)	Year Ended December 31								
	1995			1994			1993		
	AVERAGE BALANCE	INCOME/ EXPENSE	YIELD/ RATE	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate
ASSETS:									
Interest-earning assets									
Credit card loans									
held for securitization(1)	\$ 402,602	\$ 45,868	11.39%	\$ 432,581	\$ 41,015	9.48%	\$ 393,835	\$ 36,263	9.21%
Credit card loans(1)	2,537,606	351,786	13.86	1,854,103	214,100	11.55	1,819,543	223,594	12.29
Federal funds sold	453,797	26,832	5.91	49,709	2,483	5.00			
Other interest-earning assets	496,126	32,923	6.64	12,917	1,074	8.31			
Total interest-earning assets	3,890,131	\$457,409	11.76%	2,349,310	\$258,672	11.01%	2,213,378	\$259,857	11.74%
Cash and due from banks	9,309			8,331			450		
Allowance for loan losses	(69,939)			(66,434)			(59,754)		
Premises and equipment, net	123,472			53,039			28,062		
Other assets	483,082			285,674			106,907		
Total assets	\$4,436,055			\$2,629,920			\$2,289,043		
LIABILITIES AND EQUITY:									
Interest-bearing liabilities									
Interest-bearing deposits	\$ 769,688	\$ 49,547	6.44%	\$ 36,248	\$ 2,364	6.52%			
Federal funds purchased	747,350	45,878	6.14	47,332	2,927	6.18			
Bank facility	277,945	20,173	7.26	175,342	12,086	6.89			
Bank notes	1,924,087	133,635	6.95	695	53	7.63			
Affiliate borrowings	2,780	163	5.86	2,064,105	76,265	3.69	\$2,148,155	\$ 67,994	3.17%
Total interest-bearing liabilities	3,721,850	\$249,396	6.70%	2,323,722	\$ 93,695	4.03%	2,148,155	\$ 67,994	3.17%
Other liabilities	170,841			66,582			27,073		
Total liabilities	3,892,691			2,390,304			2,175,228		
Equity	543,364			239,616			113,815		
Total liabilities and equity	\$4,436,055			\$2,629,920			\$2,289,043		
Net interest spread			5.06%			6.98%			8.57%
Interest income to average interest-earning assets			11.76%			11.01%			11.74%
Interest expense to average interest-earning assets			6.41			3.99			3.07
Net interest margin			5.35%			7.02%			8.67%

(1) Interest income includes past-due fees on loans of approximately \$50,384, \$16,478 and \$9,785 for the years 1995, 1994 and 1993, respectively.

INTEREST VARIANCE ANALYSIS

Net interest income is affected by changes in the average interest rate earned on interest-earning assets and the average interest rate paid on interest-bearing liabilities. In addition, net interest income is affected by changes in the volume of interest-earning assets and interest-bearing liabilities. Table 5 sets forth the dollar amount of the increase (decrease) in interest income and interest expense resulting from changes in the volume of interest-earning assets and interest-bearing liabilities and from changes in yields and rates.

TABLE 5 -- INTEREST VARIANCE ANALYSIS

(dollars in thousands)	Year Ended December 31					
	1995 VS 1994			1994 vs 1993		
	INCREASE (DECREASE)	CHANGE VOLUME	DUE TO* RATE	Increase (Decrease)	Change due to* Volume	Rate
	.....	.....	.....	.....	.....	.....
INTEREST INCOME:						
Credit card loans held for securitization	\$ 4,853	\$ (2,989)	\$ 7,842	\$ 4,752	\$ 3,649	\$ 1,103
Credit card loans including fees	137,686	89,177	48,509	(9,494)	4,186	(13,680)
Federal funds sold	24,349	23,811	538	2,483	2,483	
Other interest-earning assets	31,849	32,109	(260)	1,074	1,074	
Total interest income	198,737	180,092	18,645	(1,185)	15,466	(16,651)
INTEREST EXPENSE:						
Deposits	47,183	47,213	(30)	2,417	2,417	
Federal funds purchased	42,951	42,973	(22)	2,927	2,927	
Bank facility	8,087	7,416	671	12,086	12,086	
Bank notes	133,582	133,586	(4)			
Affiliate borrowings	(76,102)	(104,316)	28,214	8,271	(2,745)	11,016
Total interest expense	155,701	74,141	81,560	25,701	5,907	19,794
Net interest income*	\$ 43,036	\$ 89,275	\$ (46,239)	\$ (26,886)	\$ 11,236	\$ (38,122)

\* The change in interest due to both volume and rates has been allocated in proportion to the relationship of the absolute dollar amounts of the change in each. The changes in income and expense are calculated independently for each line in the schedule. The totals for the volume and rate columns are not the sum of the individual lines.

## PROVISION AND ALLOWANCE FOR LOAN LOSSES

The provision for loan losses is the periodic expense of maintaining an adequate allowance at the amount estimated to be sufficient to absorb possible future losses, net of recoveries (including recovery of collateral), inherent in the existing on-balance sheet loan portfolio. In evaluating the adequacy of the allowance for loan losses, the Company takes into consideration several factors including economic trends and conditions, overall asset quality, loan seasoning and trends in delinquencies and expected charge-offs. The Company's primary guideline is a calculation which uses current delinquency levels, loan seasoning and other measures of asset quality to estimate net charge-offs. Credit card loans are typically charged off when they are six months past-due unless the customer is determined to be bankrupt, in which case the account is generally charged off within 30 days of verification. Once a loan is charged off, it is the Company's policy to continue to pursue the recovery of principal and interest.

Management believes that the allowance for loan losses is adequate to cover anticipated losses in the on-balance sheet loan portfolio under current conditions. There can be no assurance as to the future credit losses that may be incurred in connection with the Company's loan portfolio, nor can there be any assurance that the loan loss allowance that has been established by the Company will be sufficient to absorb such future credit losses. The allowance is a general allowance applicable to on-balance sheet credit card loans. Table 6 sets forth the activity in the allowance for loan losses for the periods indicated. See "Asset Quality," "Delinquencies" and "Net Charge-Offs" for a more complete analysis of asset quality.

TABLE 6 -- SUMMARY OF ALLOWANCE FOR LOAN LOSSES

(dollars in thousands)	Year Ended December 31				
	1995	1994	1993	1992	1991
Balance at beginning of year	\$ 68,516	\$ 63,516	\$ 55,993	\$ 31,541	\$ 20,301
Provision for loan losses	65,895	30,727	34,030	55,012	40,891
Net addition (deduction) arising in securitization transactions	(11,504)	(4,869)	(2,902)		1,503
Loans charged off	(64,260)	(31,948)	(39,625)	(44,666)	(40,755)
Recoveries of loans previously charged off	13,353	11,090	16,020	14,106	9,601
Net loans charged off*	(50,907)	(20,858)	(23,605)	(30,560)	(31,154)
Balance at end of year	\$ 72,000	\$ 68,516	\$ 63,516	\$ 55,993	\$ 31,541
Allowance for loan losses to loans at year-end*	2.85%	3.07%	3.41%	4.29%	4.11%

\* Excludes credit card loans held for securitization.



For the year ended December 31, 1995, the increase in the provision for loan losses resulted from increases in average reported loans of 37%, continued loan seasoning, a shift in the composition of reported loans and a softening in U.S. consumer credit quality. Net charge-offs as a percentage of average reported loans increased to 2.03% for the year ended December 31, 1995, from 1.13% in the prior year. The increase in the provision and charge-off rate reflects an 87% increase in the seller's interest in securitization trusts to \$1.4 billion, or 48%, of the reported average balance for 1995 from \$.7 billion, or 33% of the reported average balance for 1994. This seller's interest represents an undivided interest in the trust receivables in excess of investor certificates outstanding in the trust, which receivables are generally more seasoned than the other newer on-balance sheet loans. Additionally, growth in non-balance transfer products (i.e., secured card, cosigned, students), which have modestly higher charge-off rates than balance transfer products, increased the amount of provision necessary to absorb credit losses. In consideration of these factors, the Company increased the allowance for loan losses by \$3.5 million during 1995.

These factors notwithstanding, the Company believes that the credit quality of the portfolio has improved as a result of the application of the Company's information-based strategy. The Company, nevertheless, anticipates higher 1996 percentage losses in both reported and securitized credit card loans as these portfolios continue to season, growth in balance transfer products slows and as the consumer credit sector of the economy continues to soften. Management's estimates are subject to the products the Company offers and external factors beyond its control, which may cause actual charge-off rates to vary from current expectations.

For the year ended December 31, 1994, lower charge-off experience resulted in a 10% decrease in the provision for loan losses compared to the year ended December 31, 1993. During the year ended December 31, 1994, the Company increased the allowance for loan losses by \$5.0 million to accommodate an anticipated increase in losses as newer loans season. Net charge-offs as a percentage of average loans declined to 1.13% in the year ended December 31, 1994 from 1.19% in the year ended December 31, 1993. The 1994 low net charge-off rates were also influenced by the substantial growth in new accounts, many of which had not aged sufficiently to experience significant charge-offs.

#### CREDIT CARD SERVICING INCOME

Credit card servicing income represents servicing income from securitizations. This income reflects the excess of interest and fee income earned on securitized loans over loan losses and interest paid on investor certificates as well as other interest and fees earned and paid associated with credit enhancement.

Credit card servicing income increased \$97.8 million, or 31%, to \$409.9 million in 1995 from \$312.1 million in 1994. Average securitized loans increased 57% for the year ended December 31, 1995, compared to the prior year. Net interest income on securitized loans increased \$154.8 million, or 58%, to \$422.0 million in 1995 from \$267.2 million in 1994, primarily as a result of the 57% increase in average securitized loans. Net interest margin on these loans was principally flat at 6.86% in 1995 versus 6.83% in 1994. Charge-offs on these loans increased \$79.3 million, or 120%, to \$145.2 million in 1995 from \$65.9 million in 1994, due to the increase in average securitized loans, loan seasoning and the downturn in consumer credit. Non-interest income relating to securitized loans increased \$22.4 million, or 20%, to \$133.2 million in 1995 from \$110.8 million in 1994, primarily due to the increase in average managed account growth of 39% in 1995 compared to 1994.

Credit card servicing income increased \$189.7 million, or 155%, to \$312.1 million in 1994 from \$122.4 million in 1993. Average securitized loans increased 272% for 1994 compared to the prior year. Net interest income on securitized loans increased \$147.2 million, or 123%, primarily as a result of the increase in average securitized loans offset by a decrease in net interest margin on these loans to 6.83% in 1994 from 11.40% in 1993. Charge-offs on these loans increased \$23.9 million, or 57%, due to the increase in average securitized loans, offset by the significant decrease in the average age of securitized loans. Non-interest income relating to securitized loans increased \$66.4 million, or 150%, primarily due to the increase in average managed account growth of 73% and the significant increase in average securitized loans.

#### OTHER NON-INTEREST INCOME

Other reported non-interest income increased 69% to \$143.1 million for the year ended December 31, 1995, compared to \$84.8 million for the year ended December 31, 1994. The increase in non-interest income was driven by increased credit card service fees, which include annual membership, interchange, cash advance and overlimit fees. This increase is attributable to a rise in the number of accounts and charge volume, as well as a shift to products that generate higher amounts of fee income.

Other reported non-interest income increased 17% to \$84.8 million for 1994, from \$72.5 million in 1993. This increase is primarily attributable to the increase in accounts and related charge volume.

#### NON-INTEREST EXPENSE

Non-interest expense for the year ended December 31, 1995, increased \$113.1 million, or 29%, to \$497.4 million from \$384.3 million in the year ended December 31, 1994. The increase would have been higher if not for the \$49.0

million expense in 1994 for settlement costs to terminate a long-term data processing services contract.

Solicitation expense increased \$45.9 million, or 46%, to \$146.8 million in 1995 from \$100.9 million in 1994. Solicitation expense represents the cost to select, print and mail the Company's product offerings to potential and existing customers utilizing its information-based strategy and account management techniques.

Excluding the contract termination charge and the solicitation expense increase, other non-interest expenses increased 50%, primarily as a result of the increase in average managed accounts of 39% and increased costs associated with operations as a stand-alone company. Additionally, the increase reflects certain systems enhancements costs made since the Separation to support the information-based strategy. The Company anticipates that costs, excluding marketing, will continue to increase principally in line with account growth and product mix.

#### MARKETING INVESTMENT (in millions)

'93	'94	'95
\$56	\$101	\$147

The Company expects that solicitation expenses will increase during 1996 over the 1995 level as marketing opportunities develop. These opportunities, however, are subject to a variety of external and internal factors such as competition, market interest rates and consumer credit quality, which may affect the ultimate amount of solicitation expense.

For all periods prior to the Separation, non-interest expense includes an allocation of expenses for data processing, accounting, audit, human resources, corporate secretary, treasury, legal and other administrative support provided by Signet. Management believes the allocation methods are reasonable.

Non-interest expense for 1994 was \$384.3 million, an increase of 111% over the \$181.8 million expensed in 1993. The increase was in part the result of \$49.0 million in settlement costs to terminate a long-term data processing services contract. Signet and Electronic Data Systems ("EDS") were parties to a long-term data processing and related services agreement pursuant to which, among other things, EDS provided certain processing and administrative services to the Company. In 1992, the Company began to reduce its reliance on EDS services and in 1994 agreed through Signet to substantially terminate all EDS services over a transition period ending June 30, 1995. The cost of the contract termination, \$49.0 million, was included as a one-time charge in the Company's financial results for the year ended December 31, 1994.

Contributing to the increase in non-interest expense in 1994 were solicitation expenses which rose \$45.1 million, or 81%, to \$100.9 million in the year ended December 31, 1994. All other non-interest expense increased \$108.4 million, or 86%, primarily as a result of the 73% increase in average managed accounts.

#### INCOME TAXES

For all periods prior to the Distribution, the Company was included in Signet's consolidated tax return and income tax expense was determined on a separate return basis at the federal statutory rate of 35%. See Note I to consolidated financial statements related to Income Taxes.

#### ASSET QUALITY

The asset quality of a portfolio is generally a function of the initial underwriting criteria used, seasoning of the accounts, account management activities and geographic, demographic, or other forms of concentration, as well as general economic conditions. Seasoning is an important indicator of the stability of delinquency and loss levels; a portfolio consisting of older accounts generally behaves more predictably than a newly originated portfolio. The Company believes, based on its own analysis of the behavior of newly booked accounts, that, absent adverse changes in the economy or interest rates, the delinquency and credit loss performance of a group of new accounts is generally predictable based on testing and historical performance of accounts booked under similar criteria. Usually, these groups of new accounts initially exhibit a rising trend of delinquency and credit losses which peaks and then declines to a more steady state of delinquency and net losses. This steady state is generally reached within three years. At December 31, 1995, 51% of managed accounts, representing 50% of the total managed loan balance, were less than 18 months old. Accordingly, it is likely that the Company's managed loan portfolio will experience increased levels of delinquency and loan losses as the average age of the Company's accounts increases.

For the year ended December 31, 1995, the Company's net charge-offs as a percentage of average managed loans was 2.25%. With the implementation of the Company's information-based strategy, the Company's credit quality for the three years ended December 31, 1995 exceeded industry averages. Extensive testing of credit experience with past and present cardholders has enabled the Company to continually refine its credit policies and develop an array of proprietary statistical models and approaches to the account generation, management and collection processes. The Company's policy is to optimize the profitability of each account within acceptable risk characteristics. The Company takes measures as necessary, including requiring collateral on certain accounts and other solicitation and account management techniques, to maintain the Company's credit quality standards and to manage the risk of loss on existing accounts.



TABLE 7 -- DELINQUENCIES\*

		December 31									
		1995		1994		1993		1992		1991	
(dollars in thousands)	LOANS	% OF TOTAL LOANS	Loans	% of Total Loans	Loans	% of Total Loans	Loans	% of Total Loans	Loans	% of Total Loans	
REPORTED:											
Loans outstanding	\$ 2,921,679	100.00%	\$2,228,455	100.00%	\$1,862,744	100.00%	\$1,304,560	100.00%	\$ 767,448	100.00%	
Loans delinquent:											
30-59 days	65,711	2.25	29,032	1.30	19,186	1.03	21,525	1.65	24,175	3.15	
60-89 days	38,311	1.31	14,741	.66	10,618	.57	11,089	.85	13,737	1.79	
90 or more days	79,694	2.73	24,445	1.10	18,255	.98	23,352	1.79	25,633	3.34	
Total	\$ 183,716	6.29%	\$ 68,218	3.06%	\$ 48,059	2.58%	\$ 55,966	4.29%	\$ 63,545	8.28%	
MANAGED:											
Loans outstanding	\$10,445,480	100.00%	\$7,378,455	100.00%	\$4,832,400	100.00%	\$1,984,560	100.00%	\$1,447,448	100.00%	
Loans delinquent:											
30-59 days	165,306	1.58	90,733	1.23	46,391	.96	40,088	2.02	44,871	3.10	
60-89 days	92,665	.89	45,277	.61	25,128	.52	21,433	1.08	25,475	1.76	
90 or more days	181,243	1.73	81,720	1.11	43,975	.91	43,661	2.20	48,055	3.32	
Total	\$ 439,214	4.20%	\$ 217,730	2.95%	\$ 115,494	2.39%	\$ 105,182	5.30%	\$ 118,401	8.18%	

\* Includes credit card loans held for securitization.

For the year ended December 31, 1994, the Company's net charge-offs as a percentage of managed loans was 1.48%. Management believes this is the result of the significant growth in outstanding balances (90%), the average age of accounts (65% of accounts, representing 69% of the total managed loan balance, were less than 18 months old), prudent solicitation and underwriting processes enhanced by the application of the information-based strategy.

Delinquencies not only have the potential to impact earnings in the form of net charge-offs, they also are costly in terms of the personnel and other resources dedicated to resolving them.

#### DELINQUENCIES

Table 7 shows Capital One's loan delinquency trends for the periods presented as reported for financial statement purposes and for managed loans. The entire balance of an account is contractually delinquent if the minimum payment is not received by the billing date. However, the Company generally continues to accrue interest until the loan is charged off.

The 30-plus day delinquency rate for the reported loan portfolio increased to 6.29% at December 31, 1995, from 3.06% at the end of 1994. The reported delinquency rate reflects seasoning interests in the seller's interest in securitization trusts and the fact that a significant portion of the non-balance transfer product portfolio (i.e., secured card, cosigned, students) is included in reported loans. The Company's non-balance transfer products historically have higher delinquency rates than the typical balance transfer loans but not proportionally higher charge-offs. In the case of secured card loans, collateral, in the form of cash deposits, reduces any ultimate charge-offs. The costs associated with higher delinquency and charge-off rates are considered in the pricing of individual products.

The delinquency rate for the total managed loan portfolio was 4.20% of related loans at December 31, 1995, up from 2.95% at December 31, 1994; while the dollar amount of delinquent managed loans increased approximately \$221.5 million. The managed portfolio's delinquency rate at December 31, 1995, principally reflects the continued seasoning of accounts and loan balances, the increased presence of non-balance transfer products and a softening in the consumer credit sector. The Company expects this trend in delinquencies to continue into 1996, dependent on the factors noted above. The managed portfolio's delinquency rate at December 31, 1994, reflects the seasoning of the accounts and loan balances.

#### MANAGED CHARGE-OFF AND 30+ DAY DELINQUENCY RATE (in percent)

	'93	'94	'95
Net Charge-off Rate	2.09%	2.95%	4.20%
Delinquency Rate	2.39%	1.48%	2.25%





TABLE 8 -- NET CHARGE-OFFS\*

(dollars in thousands)	Year Ended December 31				
	1995	1994	1993	1992	1991
REPORTED:					
Average loans outstanding	\$2,940,208	\$2,286,684	\$2,213,378	\$ 772,742	\$ 673,487
Net charge-offs	59,618	25,727	26,307	30,560	34,879
Net charge-offs as a percentage of average loans outstanding	2.03%	1.13%	1.19%	3.95%	5.18%
MANAGED:					
Average loans outstanding	\$9,089,278	\$6,197,423	\$3,265,565	\$1,452,742	\$1,312,018
Net charge-offs	204,828	91,648	68,332	75,291	73,645
Net charge-offs as a percentage of average loans outstanding	2.25%	1.48%	2.09%	5.18%	5.61%

\* Includes credit card loans held for securitization.

#### NET CHARGE-OFFS

Net charge-offs include the principal amount of losses (excluding accrued and unpaid finance charges, fees and fraud losses), less current period recoveries. Credit card loans are typically charged off when they are six months past-due. For the year ended December 31, 1995, net charge-offs of managed loans increased 123% while average managed loans grew 47% over the same period. The Company anticipates further increases in reported and managed net charge-offs to the extent that trends in loan seasoning, product mix shift and the economy continue. During the year ended December 31, 1994, net charge-offs of managed loans increased 34% over the year ended December 31, 1993; however, the average managed loan portfolio increased 90% over the same period. Table 8 presents the Company's net charge-offs for the periods presented on a reported and managed basis.

#### FUNDING

As the chart to the right indicates, the Company's interest-bearing liabilities have switched from primarily transitional funding with the 1994 bank facility at December 31, 1994, to permanent financing through issuance of bank notes, large denomination CD's and other funding during 1995. Additionally, the Company's primary source of funding is the securitization of credit card loans, which increased to \$7.5 billion outstanding at December 31, 1995, compared to \$5.2 billion at December 31, 1994.

In December 1994, the Company established a \$3.5 billion bank note program under which it can issue bank notes of maturities from 30 days to 30 years. Although only \$22.0 million of bank notes were issued at December 31, 1994, the Company has expanded its usage of this vehicle for funding in 1995 to \$2.5 billion at December 31, 1995. Bank notes issued to date totaling \$1.8 billion have fixed interest rates and mature from one to five years. The Company has entered into interest rate swaps with a notional amount totaling \$1.0 billion to effectively convert these fixed rate terms to variable rates which match the variable rates earned on credit card loans (see "Interest Rate Sensitivity").

On November 17, 1995, the Company entered into a three-year, \$1.7 billion unsecured revolving credit arrangement, with three tranches (A, B and C) of committed borrowings. Under tranches A and B, the Bank may borrow up to \$1.3 billion and \$200 million, respectively, subject to an unused commitment fee of .17%. Tranche B allows the Bank to borrow in major foreign currencies. Under tranche C, the Company or the Bank may borrow up to \$215 million, subject to an unused commitment fee of .225%. Any borrowings under this bank facility will mature on November 17, 1998; however, the final maturity of each tranche may be extended for three additional one-year periods.

Table 9 reflects the costs of short-term borrowings of the Company for each of the years ended December 31, 1995, 1994 and 1993.

#### INTEREST-BEARING LIABILITIES (in millions)

December 31, 1995 - \$3,998

Bank Notes	\$2,492
Federal Funds Purchased	710
Interest-Bearing Deposits	696
Bank Facility	100

December 31, 1994 - \$2,515

Bank Facility	\$1,300
Federal Funds Purchased	687
Interest-Bearing Deposits	452
Affiliate Borrowings	54
Bank Notes	22



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

TABLE 9 -- SHORT-TERM BORROWINGS

Following is a summary of short-term borrowings for each of the years ended December 31, 1995, 1994 and 1993:

(dollars in thousands)	Maximum Outstanding at Any Month-End	Outstanding at Year-End	Average Outstanding	Average Interest Rate	Year-End Interest Rate
1995					
Interest-bearing deposits	\$ 997,547	\$ 696,037	\$ 769,688	6.44%	6.07%
Federal funds purchased	1,146,678	709,803	747,350	6.14	5.76
Bank facility	1,000,000	100,000	277,945	7.26	6.03
Bank notes	2,491,869	2,491,869	1,924,087	6.95	7.35
Affiliate borrowings			2,780	5.86	
Total		\$3,997,709	\$3,721,850	6.70%	6.81%
1994					
Federal funds purchased	\$ 686,688	\$ 686,688	\$ 47,332	6.18%	6.29%
Bank facility	1,700,000	1,300,000	175,342	6.89	6.74
Affiliate borrowings	3,261,506	54,000	2,064,105	3.69	6.00
Total		\$2,040,688	\$2,286,779	4.00%	6.57%
1993					
Affiliate borrowings	\$2,936,075	\$1,791,464	\$2,148,155	3.17%	2.95%

Table 10 shows the maturation of large denomination CD's at December 31, 1995.

TABLE 10 -- MATURITIES OF DOMESTIC LARGE DENOMINATION CERTIFICATES -- \$100,000 OR MORE

(dollars in thousands)	At December 31, 1995	
	Balance	Percent
3 months or less	\$369,663	53.11%
Over 3 through 6 months	283,230	40.69
Over 6 through 12 months	9,259	1.33
Over 1 through 5 years	33,885	4.87
Total	\$696,037	100.00

For the periods prior to the Separation, the Company operated as a division of Signet/Virginia and, therefore, had no direct, independent funding. For the financial statements for these periods, the Company's reported interest expense was determined by taking into account the nature of the Company's assets and their interest rate repricing characteristics and by using an allocation of Signet's funding cost for the respective period.

The Company's assets were categorized into three repricing pools with different funding rates. Assets that reprice with a change in short-term interest rates, such as prime-based or LIBOR-based credit card loans, were assumed to be funded at Signet's average rate paid on federal funds and repurchase agreements for the respective period. The Company's introductory rate and fixed rate credit card portfolio were assumed to be funded at Signet's average rate paid on total interest-bearing time deposits (adjusted to reflect an origination and servicing fee) and other short-term borrowings for the respective period. Long-term assets, such as the Company's premises and equipment, were assumed to be funded at Signet's average rate paid on long-term borrowings for the respective period.

The external funding of the Company's assets is significantly different than funding as a division of Signet/Virginia. Concurrent with the Separation, the Company established the 1994 bank facility and affiliate borrowings. These obligations were paid down during 1995 through a number of sources, including large denomination CD's, federal funds purchased from banks, a new bank facility, bank notes and credit card securitizations.

The initial amount of borrowings at Separation under the 1994 bank facility was approximately \$1.7 billion and the initial amount of affiliate borrowings was \$500 million. These balances had been reduced to \$1.3 billion and \$54.0 million, respectively, by December 31, 1994.

#### CAPITAL ADEQUACY

Capital is maintained to facilitate asset growth and as a cushion for unexpected losses. Capital One Bank is subject to capital adequacy guidelines adopted by the Board of Governors of the Federal Reserve System. Banking regulators consider a range of factors when determining capital adequacy, such as the organization's size, quality and stability of earnings, interest rate risk exposure, risk diversification, management expertise, asset quality, liquidity and internal controls.

At December 31, 1995, Capital One Bank's risk-based Tier I capital ratio was 11.52%, its risk-based total capital ratio was 12.77% and its Tier I leverage ratio was 8.52%. Capital One Bank's ratio of common equity to managed assets was 4.78%. These capital levels make the Company among the highest capitalized institutions in the credit card sector.

In 1994, the risk-based capital standards were revised to incorporate interest rate risk as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). FDICIA also requires the federal banking agencies to take prompt corrective action in respect to depository institutions that do not meet minimum capital requirements. FDICIA established five capital tiers: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. A depository institution's capital tier depends on its capital levels in relation to relevant capital measures, which include a risk-based capital measure, a leverage ratio capital measure and certain other factors. At December 31, 1995, the Bank exceeded the well-capitalized criteria and expects to maintain this threshold.

#### OFF-BALANCE SHEET RISK

The Company is subject to off-balance sheet risk in the normal course of business including commitments to extend credit, excess servicing income from securitization and interest rate swaps. In order to reduce the sensitivity to fluctuations in interest rates and to match asset and liability repricings, the Company has entered into interest rate swap agreements ("swaps") which involve elements of credit or interest rate risk in excess of the amount recognized on the balance sheet. Swaps present the Company with certain credit, market, legal and operational risks. The Company uses the same credit policies for off-balance sheet items as it does for on-balance sheet instruments.

#### INTEREST RATE SENSITIVITY

Interest rate sensitivity refers to the change in earnings that may result from changes in the level of interest rates. To the extent that interest income and interest expense do not respond equally to changes in interest rates, or that all rates do not change uniformly, earnings will be affected. Prior to the Separation, the Company's interest rate sensitivity was managed by Signet, as part of Signet's overall asset and liability management process, at the corporate level, not at the divisional level.

In determining interest rate sensitivity, the Company uses simulation models to identify changes in net interest income based on different interest rate scenarios. The Company manages its interest rate sensitivity through several techniques which include changing the maturity and distribution of assets and liabilities, the impact of securitizations, interest rate swaps, repricing of credit card loans and other methods.

The Company's asset/liability policy is to manage interest rate risk to limit the impact of an immediate and sustained 100 basis point change in interest rates to no more than a 5% change in managed net interest income over a twelve month period. At December 31, 1995, the Company's interest rate sensitivity to this change in rates was 1.6%, substantially within Company guidelines. Management may reprice interest rates on outstanding credit card loans subject to the right of the customer to reject such repricing by giving timely written notice to the Company and thereby relinquishing charging privileges. However, the repricing of credit card loans may be limited by competitive factors, as well as certain legal bounds.

Interest rate sensitivity at a point in time can be analyzed by measuring the mismatch in balances of interest-earning assets and interest-bearing liabilities that are subject to repricing in future periods. Table 11 reflects the interest rate repricing schedule for interest-earning assets and interest-bearing liabilities at December 31, 1995.

TABLE 11 -- INTEREST RATE SENSITIVITY

(dollars in millions)	At December 31, 1995 Subject to repricing			
	Within 180 Days	greater than 180 Days- 1 Year	greater than 1 Year- 5 Years	Over 5 Years
Interest-earning assets				
Federal funds sold	\$ 465			
Interest-bearing deposits at other banks	356			
Securities available for sale			\$ 413	
Loans		1,909	\$ 100	913
Other		336		
Total interest-earning assets	3,066	100	1,326	
Interest-bearing liabilities				
Interest-bearing deposits	653	9	34	
Federal funds purchased	634	76		
Bank facility	100			
Bank notes	799	65	1,628	
Total interest-bearing liabilities	2,186	150	1,662	
Non-rate related net assets				\$ (494)
Interest sensitivity gap	880	(50)	(336)	(494)
Impact of interest rate swaps	(2,104)		2,104	
Impact of credit card securitizations	(119)	131	(12)	
Interest sensitivity gap adjusted for impact of securitization and interest rate swaps	\$(1,343)	\$ 81	\$1,756	\$ (494)
Adjusted interest sensitivity gap as a percentage of managed assets	(10.93)%	.66%	14.30%	(4.02)%
Cumulative interest sensitivity gap	\$(1,343)	\$(1,262)	\$ 494	
Adjusted cumulative interest sensitivity gap as a percentage of managed assets	(10.93)%	(10.27)%	4.02%	

The Company enters into swaps for purposes of managing its interest rate sensitivity. The Company designates swaps to on-balance sheet instruments to alter the interest rate characteristics of such instruments and to modify interest rate sensitivity. The Company also designates swaps to off-balance sheet items to reduce the interest rate sensitivity. Table 12 reflects the type and terms of outstanding interest rate swaps at December 31, 1995 and 1994.

In 1995, the Company entered into swaps to effectively convert certain of the fixed rate bank notes into variable interest rates. These swaps have a notional amount totaling \$1 billion and mature in 1996 through 2000 to coincide with maturities of fixed bank notes. These swaps pay three-month LIBOR and receive a fixed interest rate. Additionally, in 1995, the Company entered into three basis swaps maturing in 1996 with notional amounts totaling \$260 million to effectively convert bank notes maturing in 1996 with a variable interest rate based on six-month LIBOR to three-month LIBOR.

In 1995, the Company entered into two swaps with notional amounts totaling \$591 million which are scheduled to mature in 1998 and 1999 to coincide with the maturity of 1993 securitizations. These swaps pay floating rates of three-month LIBOR and receive fixed interest rates.

Other swaps transferred to Capital One Bank in connection with the Separation consist of one swap with a notional amount of \$500 million whereby the Company pays three-month LIBOR and receives 6.74% from September 1, 1994, through August 15, 1997, and another swap for a notional principal amount of \$39 million whereby the Company pays three-month LIBOR and receives 6.78% from September 1, 1994, through October 15, 1997. The terms of these swaps were arranged to coincide with the terms of 1994 fixed interest rate securitizations.

For the period immediately after the Separation, the Company entered into a forward swap with Signet/Virginia for a notional amount of \$4.0 billion whereby the Company effectively received one-month LIBOR and paid a fixed rate of 5.50% from the Separation date to December 31, 1994. In addition, the Company entered into a forward swap for a variable notional amount ranging from \$0.6 to \$4.8 billion whereby the Company pays a fixed rate of 5.875% and receives one-month LIBOR from January 3, 1995, through April 13, 1995.

TABLE 12 -- MATURITY OF INTEREST RATE SWAPS\*

(dollars in millions)	Within One Year	Over One to Five Years	Total	Average Life (Years)
.....				
Receive fixed/pay floating:				
December 31, 1995				
Notional amount	\$ 40	\$2,104	\$2,144	2.03
Weighted average rates received	7.07%	7.45%	7.45%	
Weighted average rates paid	5.88	5.73	5.73	
December 31, 1994				
Notional amount		\$ 539	\$ 539	2.70
Weighted average rates received		6.74%	6.74%	
Weighted average rates paid		5.80	5.80	
Received floating/pay floating:				
December 31, 1995				
Notional amount	\$260		\$ 260	0.56
Weighted average rates received	5.84%		5.84%	
Weighted average rates paid	5.94		5.94	

\* Weighted average rates received and paid are based on the contractual rates in effect at December 31, 1995 and 1994, respectively.

Floating rates under the interest rate swap contracts are based on varying terms of LIBOR.

As a result of these transactions, the Company mitigated the interest rate risk associated with funding credit card assets that reprice on a timetable different from the monthly variable rate funding associated with the bank facility and affiliate borrowings and securitizations. The notional amounts and terms of the forward rate agreements effectively match the period of exposure to changes in interest rates. Table 13 reflects a roll forward of activity by notional amount for the Company's swaps.

TABLE 13 -- SUMMARY OF INTEREST RATE SWAPS

(dollars in millions)	Notional Amount
.....	
Receive floating/pay fixed:	
December 31, 1993	
Additions	\$4,000
Maturities	4,000
	-----
December 31, 1994	
Additions	4,800
Maturities	4,800
	-----
December 31, 1995	\$ --
	=====
Receive fixed/pay floating:	
December 31, 1993	
Additions	\$ 539
	-----
December 31, 1994	539
Additions	1,605
	-----
December 31, 1995	\$2,144
	=====
Receive floating/pay floating:	
December 31, 1994	
Additions	260
	-----
December 31, 1995	\$ 260
	=====

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

Swaps designated to on-balance sheet assets and liabilities had the effect of increasing net interest income \$15.9 million and \$0.4 million for the years ended December 31, 1995 and 1994, respectively, from that which would have been recorded had the Company not entered into these transactions. Swaps designated to off-balance sheet items had the effect of increasing credit card servicing income \$12.7 million and \$1.0 million in 1995 and 1994, respectively.

## LIQUIDITY

Liquidity refers to the Company's ability to meet its cash needs. The Company meets its cash requirements by securitizing assets and by debt funding. As discussed in "Managed Loan Portfolio," a significant source of liquidity for the Company has been the securitization of credit card loans. Maturity terms of the existing securitizations vary from 1996 to 2000, and typically have accumulation periods during which principal payments are aggregated to make payments to investors. As payments on the loans are accumulated for the participants in the securitization and are no longer reinvested in new loans, the Company's funding requirements for such new loans increase accordingly. The occurrence of certain events may cause the securitization transactions to amortize earlier than scheduled which would accelerate the need for funding.

Table 14 shows the amounts of investor principal of securitized credit card loans that will amortize or be otherwise paid off over the periods indicated based on outstanding securitized credit card loans at January 1, 1996. At December 31, 1995 and 1994, 72% and 70%, respectively, of the Company's total managed loans were securitized.

The Company believes that it can securitize credit card loans, purchase federal funds and establish other funding sources to fund the amortization or other payment of the securitizations in the future, although no assurance can be given to that effect. Additionally, the Company maintains a portfolio of high-quality securities such as U.S. Government, interest-bearing deposits with other banks and overnight federal funds in order to provide adequate liquidity and to meet its ongoing cash needs. At December 31, 1995, the Company had \$872 million of cash and cash equivalents with maturities of 90 days or less.

LIQUID ASSETS  
(in millions)

December 31, 1995 - \$1,286

Federal Funds Sold	\$465
U.S. Treasury Securities	413
Cash and Interest-Bearing Deposits	408

December 31, 1994 - \$506

Federal Funds Sold	\$300
Cash and Interest-Bearing Deposits	107
U.S. Treasury Securities	99

Liability liquidity is measured by the Company's ability to obtain borrowed funds in the financial markets in adequate amounts and at favorable rates. At December 31, 1995, the Company and the Bank, collectively, had \$1.6 billion in unused commitments under its bank facility available for liquidity needs.

TABLE 14 -- SECURITIZATIONS - SCHEDULED AMORTIZATION TABLE

(dollars in thousands)	1996	1997	1998	1999	2000
Beginning balance, January 1	\$7,523,801	\$6,765,067	\$4,727,531	\$2,493,531	\$1,950,000
Less repayment amounts	758,734	2,037,536	2,234,000	543,531	1,950,000
Ending balance, December 31	\$6,765,067	\$4,727,531	\$2,493,531	\$1,950,000	\$ -



(unaudited)	1995				1994			
	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER	FOURTH QUARTER	THIRD QUARTER	SECOND QUARTER	FIRST QUARTER
.....								
SUMMARY OF OPERATIONS								
(in thousands)								
Interest income	\$134,997	\$128,913	\$104,432	\$ 89,067	\$ 63,320	\$ 61,905	\$72,875	\$60,572
Interest expense	69,941	69,252	59,210	50,993	30,718	21,350	21,194	17,433
Net interest income	65,056	59,661	45,222	38,074	32,602	40,555	48,681	43,139
Provision for loan losses	21,347	18,652	17,260	8,636	6,133	8,162	8,450	7,982
Net interest income after provision for loan losses	43,709	41,009	27,962	29,438	26,469	32,393	40,231	35,157
Non-interest income	151,234	136,860	134,789	130,160	112,050	104,528	92,660	87,664
Non-interest expense(1)	135,834	124,808	116,432	120,356	97,443	138,450	79,658	68,774
Income (loss) before income taxes	59,109	53,061	46,319	39,242	41,076	(1,529)	53,233	54,047
Income taxes (benefit)	21,301	19,113	16,673	14,133	14,551	(535)	18,631	18,917
Net income (loss)	\$ 37,808	\$ 33,948	\$ 29,646	\$ 25,109	\$ 26,525	\$ (994)	\$34,602	\$35,130
=====								
AVERAGE BALANCE SHEET DATA								
(in millions)								
Loans	\$ 3,166	\$ 3,333	\$ 2,883	\$ 2,365	\$ 2,041	\$ 2,133	\$ 2,749	\$ 2,223
Allowance for loan losses	(74)	(70)	(68)	(67)	(68)	(68)	(65)	(64)
Securities	1,248	926	853	805	251			
Other assets	704	775	494	473	460	390	300	238
Total average assets	\$ 5,044	\$ 4,964	\$ 4,162	\$ 3,576	\$ 2,684	\$ 2,455	\$ 2,984	\$ 2,397
Interest-bearing deposits	\$ 843	\$ 899	\$ 741	\$ 591	\$ 145			
Bank facility	30	100	157	836	701			
Bank notes	2,492	2,322	1,854	1,008	3			
Other borrowings	905	856	686	548	1,399	\$ 2,153	\$ 2,718	\$ 2,175
Other liabilities	183	232	196	95	107	68	53	39
Stockholders'/Division equity	591	555	528	498	329	234	213	183
Total average liabilities and equity	\$ 5,044	\$ 4,964	\$ 4,162	\$ 3,576	\$ 2,684	\$ 2,455	\$ 2,984	\$ 2,397
=====								
PER COMMON SHARE								
Net income(2)	\$ .57	\$ .51	\$ .45	\$ .38	\$ .40	\$ (.02)	\$ .52	\$ .53
Dividends	.08	.08	.08					
Market prices								
High	29 1/4	29 5/8	22 1/2	20	16 5/8			
Low	22 3/4	19 1/2	18 1/4	15 3/8	13 7/8			
=====								
Average common and common equivalent shares (in thousands)(2)	66,710	66,727	66,466	66,251	66,067			
=====								

The above schedule is a tabulation of the Company's unaudited quarterly results of operations for the years ended December 31, 1995 and 1994. The Company's common shares are traded on the New York Stock Exchange under the symbol COF. In addition, shares may be traded in the over-the-counter stock market. There were 13,247 common stockholders of record at December 31, 1995.

(1) Non-interest expense includes a \$49.0 million (\$31.9 million after-tax) nonrecurring charge for computer services contract termination expense in the third quarter of 1994.

(2) Assumes 66,067 shares outstanding prior to November 22, 1994.

## MANAGEMENT'S REPORT ON CONSOLIDATED FINANCIAL STATEMENTS AND INTERNAL CONTROL

The accompanying consolidated financial statements, related financial data and other information in this annual report were prepared by the management of Capital One Financial Corporation. Management is responsible for the integrity and objectivity of the data presented, including amounts that must necessarily be based on judgments and estimates. The consolidated financial statements were prepared in conformity with generally accepted accounting principles and are free of material misstatement. In situations where acceptable alternative accounting principles exist, management selected the method that was appropriate in the circumstance.

Management of Capital One Financial Corporation depends on its accounting systems and internal control structures in meeting its responsibilities for reliable consolidated financial statements. In management's opinion, these systems and structures provide reasonable assurance that assets are safeguarded and that transactions are properly recorded and executed in accordance with management's authorizations. As an integral part of these systems and structures, the Company maintains a professional staff of internal auditors that conducts operational and special audits and coordinate audit coverage with the independent auditors.

The consolidated financial statements have been audited by the Company's independent auditors, Ernst & Young LLP, whose independent professional opinion appears separately. Their audit provides an objective assessment of the degree to which the Company's management meets its responsibility for financial reporting. Their opinion on the financial statements is based on auditing procedures which include reviewing accounting systems and internal control structures and performing selected tests of transactions and records as they deem appropriate. These auditing procedures are designed to provide reasonable assurance that the financial statements are free of material misstatement.

The Audit Committee of the Board of Directors, composed solely of outside directors, meets periodically with the internal auditors, the independent auditors and management to review the work of each and ensure that each is properly discharging its responsibilities. The independent auditors have free access to the Committee to discuss the results of their audit work and their evaluations of the adequacy of accounting systems and internal control structure and the quality of financial reporting.

/s/ RICHARD D. FAIRBANK

RICHARD D. FAIRBANK  
Chairman and Chief Executive Officer

/s/ NIGEL W. MORRIS

NIGEL W. MORRIS  
President and Chief Operating Officer

/s/ JAMES M. ZINN

JAMES M. ZINN  
Senior Vice President and Chief Financial Officer

## REPORT OF INDEPENDENT AUDITORS

BOARD OF DIRECTORS AND STOCKHOLDERS  
CAPITAL ONE FINANCIAL CORPORATION

We have audited the accompanying consolidated balance sheets of Capital One Financial Corporation as of December 31, 1995 and 1994, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 1995. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Capital One Financial Corporation at December 31, 1995 and 1994, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 1995, in conformity with generally accepted accounting principles.

/s/ ERNST & YOUNG LLP

Washington, D.C.  
January 23, 1996

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	December 31	
(dollars in thousands, except per share data)	1994	1995
ASSETS:		
Cash and due from banks	\$ 51,680	\$ 93,880
Federal funds sold	465,000	300,000
Interest-bearing deposits at other banks	355,780	13,000
	-----	
Cash and cash equivalents	872,460	406,880
Securities available for sale	413,016	99,070
Credit card loans held for securitization	400,000	
Credit card loans	2,521,679	2,228,455
Less: Allowance for loan losses	(72,000)	(68,516)
	-----	
Net loans	2,449,679	2,159,939
Premises and equipment, net	139,074	99,684
Interest receivable	55,573	14,615
Accounts receivable from securitizations	359,379	237,015
Other assets	70,140	74,777
	-----	
Total assets	\$4,759,321	\$3,091,980
	=====	
LIABILITIES:		
Interest-bearing deposits	\$ 696,037	\$ 452,201
Federal funds purchased	709,803	686,688
Bank facility	100,000	1,300,000
Bank notes	2,491,869	22,000
Affiliate borrowings		54,000
Interest payable	73,931	9,264
Other liabilities	88,490	93,270
	-----	
Total liabilities	4,160,130	2,617,423
	-----	
STOCKHOLDERS' EQUITY:		
Preferred stock, par value \$.01 per share; authorized 50,000,000 shares, none issued or outstanding		
Common stock, par value \$.01 per share; authorized 300,000,000 shares, 66,174,567 and 66,067,250 issued and outstanding at December 31, 1995 and 1994, respectively	662	661
Paid-in capital, net	469,830	462,844
Retained earnings	128,699	11,052
	-----	
Total stockholders' equity	599,191	474,557
	-----	
Total liabilities and stockholders' equity	\$4,759,321	\$3,091,980
	=====	

See notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF INCOME

	Year Ended December 31		
(in thousands, except per share data)	1995	1994	1993
INTEREST INCOME:			
Credit card loans, including fees	\$351,786	\$214,100	\$223,594
Credit card loans held for securitization	45,868	41,015	36,263
Federal funds sold	26,832	2,483	
Other	32,923	1,074	
Total interest income	457,409	258,672	259,857
INTEREST EXPENSE:			
Deposits	49,547	2,364	
Federal funds purchased	45,878	2,927	
Bank facility	20,173	12,086	
Bank notes	133,635	53	
Affiliate borrowings	163	76,265	67,994
Total interest expense	249,396	93,695	67,994
NET INTEREST income	208,013	164,977	191,863
Provision for loan losses	65,895	30,727	34,030
Net interest income after provision for loan losses	142,118	134,250	157,833
Non-Interest INCOME:			
Credit card servicing	409,927	312,108	122,362
Credit card service charges	86,029	46,083	38,587
Interchange	33,457	25,580	24,635
Other	23,630	13,131	9,241
Total non-interest income	553,043	396,902	194,825
NON-INTEREST EXPENSE:			
Salaries and associate benefits	135,833	94,739	55,284
Solicitation	146,810	100,886	55,815
Communications and data processing	61,508	70,084	41,013
Supplies and equipment	42,081	21,794	8,778
Occupancy	13,655	6,746	2,647
Contract termination		49,000	
Other	97,543	41,076	18,267
Total non-interest expense	497,430	384,325	181,804
Income before income taxes	197,731	146,827	170,854
Income taxes	71,220	51,564	60,369
Net income	\$126,511	\$ 95,263	\$110,485
Earnings per share	\$ 1.90	\$ 1.44	\$ 1.67
Weighted average common and common equivalent shares outstanding	66,593	66,067	66,067

See notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

(dollars in thousands, except per share data)	Common Stock		Paid-in Capital	Deferred Compensation	Retained Earnings/ Division Equity	Total Stockholders'/ Division Equity
	Shares	Amount				
Balance, December 31, 1992					\$ 69,294	\$ 69,294
Net income					110,485	110,485
Transfer to Signet					(10,900)	(10,900)
Balance, December 31, 1993					168,879	168,879
Net income					95,263	95,263
Recapitalization and capital contribution from Signet			\$357,875		(253,069)	104,806
Issuance of common stock						
Initial public offering	65,602,850	\$656	101,259			101,915
Restricted stock grants	464,400	5	7,425	\$(7,430)		
Amortization of deferred compensation				3,715		3,715
Change in unrealized losses on securities available for sale, net of income taxes of \$12					(21)	(21)
Balance, December 31, 1994	66,067,250	661	466,559	(3,715)	11,052	474,557
Net income					126,511	126,511
Cash dividends - \$ .24 per share					(15,883)	(15,883)
Issuance of common stock	65,645	1	1,256			1,257
Exercise of stock options	6,582		132			132
Tax benefit from vesting of 464,400 restricted shares of common stock			1,578			1,578
Restricted stock grants, net of cancellations	35,090		637	(637)		
Amortization of deferred compensation				4,020		4,020
Change in unrealized gains on securities available for sale, net of income taxes of \$3,780					7,019	7,019
BALANCE, DECEMBER 31, 1995	66,174,567	\$662	\$470,162	\$ (332)	\$128,699	\$599,191

See notes to consolidated financial statements.

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## CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)	Year Ended December 31		
	1995	1994	1993
OPERATING ACTIVITIES:			
Net income	\$ 126,511	\$ 95,263	\$ 110,485
Adjustments to reconcile net income to cash provided by operating activities:			
Provision for loan losses	65,895	30,727	34,030
Depreciation and amortization	33,424	16,173	4,431
Amortization of deferred compensation	4,020	3,715	
Increase in interest receivable	(40,958)	(6,322)	(1,962)
Increase in accounts receivable from securitizations	(122,364)	(129,967)	(58,945)
Increase in other assets	(8,685)	(35,645)	(15,767)
Increase in interest payable	64,667	9,264	
(Decrease) increase in other liabilities	(4,780)	62,406	14,863
Net cash provided by operating activities	117,730	45,614	87,135
INVESTING ACTIVITIES:			
Purchases of securities available for sale	(403,218)	(98,519)	
Proceeds from maturities of securities available for sale	100,000		
Proceeds from securitization of credit card loans	3,525,000	2,393,937	2,283,329
Net increase in loans	(4,293,988)	(2,796,465)	(2,884,040)
Recoveries of loans previously charged off	13,353	11,090	16,020
Additions of premises and equipment, net	(61,623)	(58,078)	(16,069)
Net cash used for investing activities	(1,120,476)	(548,035)	(600,760)
FINANCING ACTIVITIES:			
Net increase in interest-bearing deposits	243,836	452,201	
Net (decrease) increase in other borrowings	(1,176,885)	1,986,688	
Issuance of bank notes	2,469,869	22,000	
Net (decrease) increase in affiliate borrowings	(54,000)	(1,737,464)	524,957
Proceeds from exercise of stock options	132		
Net proceeds from issuance of common stock	1,257	101,915	
Dividends paid	(15,883)		
Capital contributed from (transferred to) Signet		83,006	(10,900)
Net cash provided by financing activities	1,468,326	908,346	514,057
Increase in cash and cash equivalents	465,580	405,925	432
Cash and cash equivalents at beginning of year	406,880	955	523
Cash and cash equivalents at end of year	\$ 872,460	\$ 406,880	\$ 955

See notes to consolidated financial statements.

(dollars in thousands, except per share data)

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NOTE A  
SIGNIFICANT ACCOUNTING POLICIES

ORGANIZATION AND BASIS OF PRESENTATION: The consolidated financial statements include the accounts of Capital One Financial Corporation (the "Parent") and its subsidiaries (collectively, the "Company"). The Company is a financial services company that offers credit card products as its primary business.

The Company became a stand-alone company on November 22, 1994, when net assets aggregating \$357,875 of the credit card operations of Signet Bank/Virginia, a wholly owned subsidiary of Signet Banking Corporation ("Signet"), were contributed to Capital One Bank (the "Bank"). On the same day, the Company issued 7,125,000 shares of its common stock in an initial public offering (the "IPO") and 464,400 shares of restricted stock (together representing approximately 11.5% of the Company). On February 28, 1995, Signet distributed to its stockholders its remaining interest in the Company. The accompanying financial statements reflect the operations of the Company as a division of Signet Bank/Virginia (the "Division") for the period prior to November 22, 1994. Retained earnings at December 31, 1995, represent the earnings of the Company subsequent to November 22, 1994. All significant intercompany balances and transactions have been eliminated. Certain prior years' amounts have been reclassified to conform to the 1995 presentation.

For the periods prior to November 22, 1994, the financial statements include an allocation of Signet expenses for interest expense, data processing, accounting, audit, human resources, corporate secretary, legal and other administrative support. Such expenses were based on actual usage or using other allocation methods that, in the opinion of management, are reasonable and approximate actual usage. The interest expense allocation is based on borrowings from a wholly owned subsidiary of Signet, assuming three funding pools (short-term, medium-term and long-term), each with costs based on the average relevant historical rates paid by Signet. Additionally, Signet Bank/Virginia retained a credit card portfolio of approximately \$350,000 at November 22, 1994, that is associated with its regional customer base. The financial statements assume the Company assessed a normal servicing fee for servicing this retained portfolio prior to November 22, 1994.

Signet and the Company have entered into a variety of interim service agreements that expire in 1996, effective as of the IPO, to replace the services provided by Signet and previously allocated to the Company. These costs are included at the rates established in the related agreements, which approximate market rates.

The following is a summary of the significant accounting policies used in preparing the accompanying financial statements.

CASH AND CASH EQUIVALENTS: Cash and cash equivalents includes cash and due from banks, federal funds sold and interest-bearing deposits at other banks. Cash paid during the years ended December 31, 1995, 1994 and 1993, for interest was \$184,729, \$84,431 and \$67,994, respectively. Cash paid for income taxes for the years ended December 31, 1995, 1994 and 1993, was \$82,561, \$46,094 and \$61,458, respectively.

SECURITIES AVAILABLE FOR SALE: Debt securities for which the Company does not have the positive intent and ability to hold to maturity are classified as securities available for sale. These securities are stated at fair value, with the unrealized gains and losses, net of tax, reported as a component of retained earnings. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is included in other interest income.

CREDIT CARD LOANS HELD FOR SECURITIZATION: Credit card loans held for securitization are loans management intends to securitize, generally within three to six months, and are carried at the lower of aggregate cost or market value.

CREDIT CARD LOANS: Interest income is generally recognized until the loan is charged off. Credit card loans typically are charged off (net of any collateral) when the loan is six months past-due unless the customer is determined to be bankrupt. Bankrupt accounts are generally charged off within thirty days of verification. The accrued interest portion of a charged-off loan balance is deducted from current period interest income with the remaining principal balance charged off against the allowance for loan losses. CreditCard annual membership fees and direct loan origination costs are deferred and amortized over one year on a straight-line basis. Deferred fees (net of deferred costs) were \$33,438 and \$29,949 at December 31, 1995 and 1994, respectively.

ALLOWANCE FOR LOAN LOSSES: The allowance for loan losses is maintained at the amount estimated to be sufficient to absorb possible future losses, net of recoveries (including recovery of collateral), inherent in the existing on-balance sheet loan portfolio. The provision for loan losses is the periodic cost of maintaining an adequate allowance. In evaluating the adequacy of the allowance for loan losses, management takes into consideration several of the following factors: historical charge-off and recovery activity (noting any particular trend changes over recent periods); trends in delinquencies; trends in loan volume and size of credit risks; the degree of risk inherent in the composition of the loan portfolio; current and anticipated economic conditions; credit evaluations; and underwriting policies.





**SECURITIZATIONS:** The Company securitizes credit card loans and records such securitizations as sales in accordance with Statement of Financial Accounting Standards ("SFAS") No.77, "Reporting by Transferors for Transfers of Receivables with Recourse." Due to the relatively short average life of credit card loans securitized (approximately 7 to 10 months), no gains are recorded at the time of sale. Rather, excess servicing fees related to the securitizations are recorded over the life of each sale transaction. The excess servicing fee is based upon the difference between finance charges received from the cardholders less the yield paid to investors, credit losses and a normal servicing fee, which is also retained by the Company. In accordance with the sale agreements, a fixed amount of excess servicing fees is set aside to absorb potential credit losses. Accounts receivable from securitization principally represents excess servicing fees earned and due to the Company. Transaction expenses are deferred and amortized over the reinvestment period of the transaction as a reduction of loan servicing fees. The monthly pattern of recording loan servicing fees is similar to the revenue recognition that the Company would have experienced if the loans had not been securitized.

**PREMISES AND EQUIPMENT:** Premises and equipment are stated at cost less accumulated depreciation and amortization (\$61,452 at December 31, 1995; \$37,162 at December 31, 1994). Depreciation and amortization expense is computed generally by the straight-line method.

**SOLICITATION:** The Company expenses the costs related to the solicitation of new accounts and balances as incurred.

**CREDIT CARD FRAUD LOSSES:** The Company experiences fraud losses from the unauthorized use of credit cards. Transactions suspected of being fraudulent are charged to non-interest expense after a 60-day investigation period.

**INCOME TAXES:** Deferred tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse.

**EARNINGS PER SHARE:** Earnings per share are based on the weighted average number of common and common equivalent shares, including dilutive stock options and restricted stock outstanding during the three years ended December 31, 1995, after giving retroactive effect to the initial capitalization of the Company as if the issuance of all shares had occurred on January 1, 1993. Income that would have been generated from the proceeds of the IPO was not considered in the calculation of earnings per share.

**INTEREST RATE SWAP AGREEMENTS:** The Company enters into interest rate swap agreements ("swaps") for purposes of managing its interest rate sensitivity. The Company designates swaps to on-balance sheet instruments to alter the interest rate characteristics of such instruments and to modify interest rate sensitivity. The Company also designates swaps to off-balance sheet items to reduce the interest rate sensitivity associated with off-balance sheet cash flows (i.e., securitizations).

Swaps involve the periodic exchange of payments over the life of the agreements. Amounts received or paid on swaps that are used to manage interest rate sensitivity and alter the interest rate characteristics of on-balance sheet instruments or reduce interest rate sensitivity associated with off-balance sheet items are recorded on an accrual basis as an adjustment to the related income or expense of the item to which the agreements are designated. The related amount receivable from counterparties of \$26,652 and \$4,209 at December 31, 1995 and 1994, respectively, is included in other assets. Changes in the fair value of swaps are not reflected in the accompanying financial statements.

The Company's credit exposure on swaps is limited to the value of the swaps that have become favorable to the Company in the event of nonperformance by the counterparties. The Company does not require collateral from counterparties on its existing agreements. The Company actively monitors the credit ratings of counterparties and does not anticipate nonperformance by the counterparties with which it transacts its swaps.

**USE OF ESTIMATES:** The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

#### NOTE B SECURITIES AVAILABLE FOR SALE

Securities available for sale at December 31, 1995, consist of U.S. Government obligations maturing in 1997 and 1998, which have an amortized cost of \$402,251 and a market value of \$413,016.

Securities available for sale at December 31, 1994, consist of a U.S. Government obligation that matured in March 1995 and had an amortized cost of \$99,103 and a market value of \$99,070.

NOTE C  
ALLOWANCE FOR LOAN LOSSES

The following is a summary of changes in the allowance for loan losses:

	Year Ended December 31		
	1995	1994	1993
Balance at beginning of year	\$ 68,516	\$ 63,516	\$ 55,993
Provision for loan losses	65,895	30,727	34,030
Transfer to loans held for securitization	(11,504)	(4,869)	(2,902)
Charge-offs	(64,260)	(31,948)	(39,625)
Recoveries	13,353	11,090	16,020
Net charge-offs	(50,907)	(20,858)	(23,605)
Balance at end of year	\$ 72,000	\$ 68,516	\$ 63,516

NOTE D  
BORROWINGS

Interest-bearing deposits of \$696,037 and \$452,201 at December 31, 1995 and 1994, represent certificates of deposit greater than \$100 with weighted average interest rates of approximately 6.07% and 6.43%, respectively.

At December 31, 1995 and 1994, federal funds purchased with overnight maturities consist of \$137,500 and \$203,000, with weighted average interest rates of approximately 5.41% and 5.94%, respectively, and \$572,303 and \$483,688 with average maturities of less than three months and weighted average interest rates of approximately 5.84% and 6.43%, respectively.

On November 17, 1995, the Company entered into a three-year, \$1,715,000 unsecured revolving credit arrangement (the "Credit Facility"). The Credit Facility, which replaces the 1994 syndicated bank facility discussed below, consists of three tranches. Tranches A and B are for \$1,300,000 and \$200,000, respectively, are available to the Bank, and are subject to an unused commitment fee of .17%. In addition, Tranche B allows the Bank to borrow in major foreign currencies. Tranche C is for \$215,000 and is available to the Parent and the Bank and is subject to an unused commitment fee of .225%. Borrowings under the Credit Facility bear interest at varying terms of the London Interbank Offered Rate ("LIBOR") and mature on November 17, 1998; however, the final maturity may be extended for three additional one-year periods. As of December 31, 1995, \$100,000 was outstanding under Tranche A of the Credit Facility at a rate of 6.03%.

In 1994, the Company obtained a syndicated bank facility, which matured in 1995, of \$1,700,000, including a \$500,000 revolving line of credit and subject to an unused commitment fee of 0.1875%. At December 31, 1994, \$1,300,000 was outstanding on this facility at a variable interest rate based on LIBOR of 6.74%.

Bank notes of \$2,491,869 and \$22,000 at December 31, 1995 and 1994, have weighted average interest rates of approximately 7.35% and 8.10%, respectively. Bank notes consist of \$1,804,869 and \$17,000 of fixed interest rate notes and \$687,000 and \$5,000 of variable interest rate notes based on LIBOR, at December 31, 1995 and 1994, respectively.

In 1995, the Company entered into swaps to effectively convert certain of the interest rates on bank notes from fixed to variable. The swaps have a notional amount totaling \$1,014,000 and mature in 1996 through 2000 to coincide with maturities of fixed bank notes. These swaps pay three-month LIBOR at a weighted average contractual rate at December 31, 1995, of 5.69% and receive a weighted average fixed rate of 7.68%. Additionally in 1995, the Company entered into basis swaps maturing in 1996 with notional amounts totaling \$260,000 to effectively convert bank notes maturing in 1996 with a variable rate based on six-month LIBOR to a variable rate based on three-month LIBOR.

Affiliate borrowings at December 31, 1994, of \$54,000 consisted of overnight federal funds purchased from Signet at a fixed rate of 6.00%.

In 1994, the Company entered into a forward interest rate swap agreement that provides that the Company pay interest at a rate of 5.875% and receive one-month LIBOR (contractual rate of 6.07% at January 3, 1995) on a variable notional amount from January 3, 1995 to April 13, 1995. The swap had a variable notional amount up to \$4,800,000 and was designated to reduce the interest rate sensitivity associated with funding credit card loans repricing on a timetable other than the monthly variable funding associated with the bank facility and securitizations. The notional amount and term of this agreement effectively matched the period of sensitivity to changes in interest rates.

Borrowings at December 31, 1995, mature as follows:

	Interest- Bearing Deposits	Bank Notes	Total
.....			
1996	\$662,152	\$ 603,500	\$1,265,652
1997	23,885	862,437	886,322
1998		611,166	611,166
1999	10,000	115,000	125,000
2000		299,766	299,766
	-----		
	\$696,037	\$2,491,869	\$3,187,906
	=====		

NOTE E  
ASSOCIATES BENEFIT PLANS

Through December 31, 1995, the Company provided eligible associates with pension benefits through its Cash Balance Pension Plan. The benefits of the Cash Balance Pension Plan were based on years of service and the associate's career average earnings. The Company's funding policy was to contribute amounts to the plan sufficient to meet the minimum funding requirements set forth in the Employee Retirement Income Security Act of 1974, plus such additional amounts as the Company determined to be appropriate from time to time. Plan assets at December 31, 1995, consisted of cash and investments in mutual funds which hold primarily listed stocks and bonds.

Effective December 31, 1995, the Company amended the Cash Balance Pension Plan so that no future pay-based credits will accrue. Future pay credits will accrue to the Employee Savings Plan as discussed further below. Such an event constitutes a "curtailment" under SFAS No. 88, "Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and Termination Benefits." The curtailment had no material effect on the Company's results of operations or financial condition.

The following sets forth the plan's funded status and amounts recognized in the Company's balance sheet:

	December 31	
	1995	1994
Actuarial present value of benefit obligations:		
Vested benefit obligations	\$(4,611)	\$(4,608)
Accumulated benefit obligation	\$(6,690)	\$(4,985)
Projected benefit obligation	\$(6,690)	\$(4,985)
Plan assets, at fair value	6,823	4,985
Plan assets in excess of projected benefit obligation	133	
Unrecognized net asset	(247)	(288)
Unrecognized net loss	917	1,225
Net pension asset	\$ 803	\$ 937

Net periodic pension cost includes the following components:

	Year Ended December 31		
	1995	1994	1993
Service cost-benefits earned during the year	\$ 1,338	\$ 874	\$ 665
Interest cost on projected benefit obligation	424	279	266
Actual return on plan assets	(1,055)	213	(149)
Net amortization and deferral	577	(580)	(187)
Net periodic pension cost	\$ 1,284	\$ 786	\$ 595

Assumptions used were as follows:

	1995	1994	1993
Discount rates	7.00%	8.50%	7.25%
Rates of increase in compensation levels of associates	5.00%	5.00%	5.00%
Expected long-term rate of return on plan assets	8.75%	8.75%	8.75%

The Company also sponsors a contributory Employee Savings Plan for which substantially all full-time and certain part-time associates are eligible to participate. The Company matches a portion of associate contributions, plus makes discretionary contributions based upon the Company's earnings per common share. Effective January 1, 1996, the Company will be required to make additional contributions relating to pay-based credits to eligible associates which were previously provided under the Cash Balance Pension Plan. The Company's contributions to this plan were \$2,701, \$3,980 and \$2,615 in 1995, 1994 and 1993, respectively.

In addition, the Company offers continued medical coverage and life insurance benefits for its retirees through its Employee Welfare Benefits Plan. The following table sets forth the plan's combined funded status with regard to postretirement benefits reconciled with the amount shown in the Company's balance sheet:

	Year Ended December 31	
	1995	1994
Accumulated postretirement benefit obligation:		
Fully eligible active plan participants	\$ (62)	\$ (51)
Other active plan participants	(1,937)	(1,397)
	(1,999)	(1,448)
Plan assets at fair value		
Accumulated postretirement benefit obligation in excess of plan assets	(1,999)	(1,448)
Unrecognized transition obligation	936	996
Unrecognized net loss	(152)	(321)
	\$(1,215)	\$ (773)
Accrued postretirement benefit cost		

Net periodic postretirement benefit cost includes the following components:

	Year Ended December 31		
	1995	1994	1993
Service cost-benefits earned during the year	\$264	\$162	\$120
Interest cost on projected benefit obligation	123	87	85
Amortization of transition obligation over 20 years	55	55	52
Net periodic postretirement benefit cost	\$442	\$304	\$257

For measurement purposes, a 9.50% annual rate of increase in the per capita cost of covered health care benefits was assumed for 1995 for participants under 65 years of age; the rate was assumed to decrease gradually to 5.0% in 2005 and remain at that level thereafter. Increasing the assumed health care cost trend rates by one percentage point in each year would increase the accumulated postretirement benefit obligation for the medical plans, as of December 31, 1995, by \$290, and the aggregate of the service and interest cost components of net periodic postretirement benefit cost for 1995 by \$70.

Effective January 1, 1996, the features of the postretirement benefits plan have changed. The contributions required for participation are now based on attained age, with higher contributions for pre-65 coverage than for post-65 coverage. Life insurance benefits are now offered only to currently active associates who attained age 50 before December 31, 1995.

The weighted average discount rate used in determining the accumulated postretirement benefit obligation was 7.00%, 8.50% and 7.25% for 1995, 1994 and 1993, respectively.

The Employee Welfare Benefits Plan also contains a Flexible Benefits Program. The program allows associates to select their benefit options, including medical coverage, disability insurance and paid leave. The program enables the Company to better manage its rising health care costs, as well as to provide associates more choice in the selection of their benefits package.

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NOTE F  
STOCK PLANS

Effective January 1, 1995, the Company adopted the Capital One Financial Corporation Employee Stock Purchase Plan ("the Purchase Plan") whereby associates of the Company and its subsidiaries are eligible to purchase common stock through monthly salary deductions of a maximum of 15% and a minimum of 2% of monthly base pay. The amounts deducted are applied to the purchase of unissued common stock of the Company at 85% of the current market price. An aggregate of 1,000,000 common shares have been authorized for issuance under the plan, 934,355 shares of which were available for issuance at December 31, 1995.

Under the 1994 Stock Incentive Plan, the Company has reserved 5,370,880 common shares for issuance in the form of incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock and incentive stock. The number of shares available for future grant were 2,061,640 and 3,334,473 at December 31, 1995 and 1994, respectively. Options vest annually over three to five years and expire beginning November 2004. The restrictions on restricted stock (of which 23,215 shares were issued in 1995) expire annually over three years.

Additionally, pursuant to a Marketing and Management Services Agreement between Signet Bank/Virginia and Fairbank Morris, Inc. ("FMI"), a corporation controlled by members of the Company's executive management, 464,400 shares of restricted stock were awarded to FMI for services rendered for the period from January 1, 1994 to December 31, 1995. In connection with this award, \$3,715 in compensation was expensed in both 1995 and 1994.

On April 26, 1995, the Company adopted the 1995 Non-Associates Directors Stock Incentive Plan (the "1995 Directors Plan"). The 1995 Directors Plan authorizes an aggregate maximum of 500,000 shares of the Company's common shares for the automatic grant of restricted stock and stock options to eligible members of the Company's Board of Directors. At December 31, 1995, 452,500 shares were available for grant under this plan. The restrictions on the restricted stock (of which 12,500 shares were issued in 1995) expire in 1996.

On September 15, 1995, the Company granted, subject to stockholder approval of an increase of 2,000,000 in shares reserved for issuance under the 1994 Stock Incentive Plan, to its Chief Executive Officer and its President and Chief Operating Officer performance-based options to purchase 2,500,000 common shares at the then market price of \$29.19 per share. Fifty percent of the options vest if the Company's stock reaches \$37.50 per share, 25% vest if the stock reaches \$43.25 per share and the remaining 25% vest if the stock reaches \$50.00 per share. If these price levels are not achieved within five years from the date of grant, the portion of the options not previously vested will expire. Upon stockholder approval, the difference between the exercise price and the performance vesting price will be recognized as compensation cost over the estimated vesting period.

A summary of changes in shares of Common Stock under option for the years of 1995 and 1994 is as follows:

	Number of Shares	Option Price per Share
.....		
Outstanding December 31, 1993		
Granted	2,036,407	\$ 16.00
Exercised		
Canceled		
	-----	
Outstanding December 31, 1994	2,036,407	16.00
Granted	1,361,343	12.93 - 29.19
Exercised	(6,582)	18.88
Canceled	(76,100)	16.00 - 19.31
	-----	
Outstanding December 31, 1995	3,315,068	\$12.93 - 29.19
	=====	

On November 16, 1995, the Board of Directors of the Company declared a dividend distribution of one Right for each outstanding share of common stock. Each Right entitles a registered holder to purchase from the Company one onehundredth of a share of the Company's authorized Cumulative Participating Junior Preferred Stock (the "Junior Preferred Shares") at a price of \$150 (the "Purchase Price"), subject to adjustment. The Company has reserved 1,000,000 shares of its authorized preferred stock for the Junior Preferred Shares. Because of the nature of the Junior Preferred Shares' dividend and liquidation rights, the value of the one one-hundredth interest in a Junior Preferred Share purchasable upon exercise of each Right should approximate the value of one share of common stock. Initially, the Rights are not exercisable and trade automatically with the common stock. The Rights generally become exercisable, however, and separate certificates representing the Rights will be distributed, if any person or group acquires 15 percent or more of the Company's outstanding common stock or a tender offer or exchange offer is announced for the Company's common stock. The Rights expire on November 29, 2005, unless earlier redeemed by the Company at \$.01 per Right prior to the time any person or group acquires 15 percent of the outstanding common stock. Until the Rights become exercisable, the Rights have no dilutive effect on earnings per share.

The Company accounts for associate stock-based compensation awards under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"). During 1995, the Financial Accounting Standards Board issued SFAS No. 123, "Accounting for Stock-Based Compensation," which is effective for awards issued after December 31, 1995. SFASNo. 123 provides, based upon the fair value of the award, for associate stock-based compensation to be recognized in the statement of income or, should the Company elect to continue to account for associate stock-based compensation under the intrinsic value method under APB No. 25, disclosure in the financial statements of the effects of SFASNo. 123 as if the recognition provisions were adopted. The Company continues to evaluate its alternatives available under the provisions of SFASNo. 123 and has not determined whether it will adopt the statement for expense recognition purposes.

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NOTE G  
OTHER NON-INTEREST EXPENSE

Other non-interest expense consists of the following:

	Year Ended December 31		
	1995	1994	1993
.....			
Credit card fraud losses	\$27,721	\$10,852	\$6,424
Professional services	28,787	9,203	2,063
Bankcard association assessments	13,116	8,344	4,772
Other	27,919	12,677	5,008
	-----		
Total	\$97,543	\$41,076	\$18,267
	=====		

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NOTE H  
REGULATORY MATTERS

The Bank is subject to capital adequacy guidelines adopted by the Federal Reserve Board, including minimum capital and leverage ratios. At December 31, 1995, the Bank's risk-based Tier 1 capital ratio, risk-based total capital ratio and Tier 1 leverage ratio were 11.52%, 12.77% and 8.52%, respectively. Additionally, certain regulatory restrictions exist which limit the ability of the Bank to transfer funds to its Parent. Bank regulators consider a range of factors in determining capital adequacy and restrictions on dividends, such as the bank's size, quality and stability of earnings, interest rate risk exposure, risk diversification, management expertise, asset quality, liquidity and internal controls. At December 31, 1995, retained earnings of the Bank of \$68,733 were available for payment of dividends to the Parent, without prior approval by regulatory authorities.





NOTE I  
INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 31, 1995 and 1994, are as follows:

	December 31	
	1995	1994
Deferred tax assets:		
Allowance for loan losses	\$26,177	\$23,981
Other	2,590	2,981
Valuation allowance		
Total deferred tax assets	28,767	26,962
Deferred tax liabilities:		
Finance charge accrual	9,794	5,958
Unrealized gains on securities available for sale	3,768	
Other	6,302	864
Total deferred tax liabilities	19,864	6,822
Net deferred tax assets	\$8,903	\$20,140

The components of income tax expense (benefit) are as follows:

	Year Ended December 31		
	1995	1994	1993
Federal taxes	\$63,162	\$51,942	\$61,458
State taxes	600		
Deferred income taxes	7,458	(378)	(1,089)
Income taxes	\$71,220	\$51,564	\$60,369

A reconciliation of the statutory income tax expense included in the consolidated statements of income is as follows:

	Year Ended December 31		
	1995	1994	1993
Income tax at statutory federal tax rate of 35%	\$69,206	\$51,389	\$59,799
State taxes, net of federal benefit	390		
Other	1,624	175	570
Income taxes	\$71,220	\$51,564	\$60,369

NOTE J  
COMMITMENTS AND CONTINGENCIES

At December 31, 1995, the Company has outstanding lines of credit of approximately \$23,700,000 committed to its customers. Of that total commitment, approximately \$13,250,000 is unused. While this amount represents the total available lines of credit to customers, the Company has not experienced and does not anticipate that all of its customers will exercise their entire available line at any given point in time. The Company has the right to increase, reduce, cancel, alter or amend the terms of these available lines of credit at any time.

Certain premises and equipment are leased under agreements that expire at various dates through 2004, without taking into consideration available renewal options. Many of these leases provide for payment by the lessee of property

taxes, insurance premiums, cost of maintenance and other costs. In some cases, rentals are subject to increase in relation to a cost of living index. Total rental expense amounted to approximately \$5,394, \$3,700 and \$3,503 for the years ended, December 31, 1995, 1994 and 1993, respectively. Total rental income from subleases amounted to approximately \$1,487 in 1995.

Future minimum rental commitments as of December 31, 1995, for all non-cancelable operating leases with initial or remaining terms of one year or more are as follows:

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1996	\$ 4,571
1997	4,469
1998	4,381
1999	2,317
2000	1,373
Thereafter	2,756
	-----
	\$19,867
	=====

During 1995, the Company and the Bank became involved in three purported class action suits relating to certain collection practices engaged in by Signet Bank/Virginia and, subsequently, by the Bank. The complaints in these three cases allege that Signet Bank/Virginia and/or the Company violated a variety of federal and state statutes and constitutional and common law duties by filing collection lawsuits, obtaining judgments and pursuing garnishment proceedings in the Virginia state courts against defaulted credit card customers who were not residents of Virginia. These cases have been filed in the Superior Court of California in the County of Alameda, Southern Division, on behalf of a class of California residents, in the United States District Court for the District of Connecticut on behalf of a nationwide class, and in the United States District Court for the Middle District of Florida on behalf of a nationwide class (except for California). The complaints in these three cases

seek unspecified statutory damages, compensatory damages, punitive damages, restitution, attorneys' fees and costs, a permanent injunction and other equitable relief.

In connection with the transfer of substantially all of Signet Bank/Virginia's credit card business to the Bank in November 1994, the Company and the Bank agreed to indemnify Signet Bank/Virginia for certain liabilities incurred in litigation arising from that business, which may include liabilities, if any, incurred in the three purported class action cases described above. Because no specific measure of damages is demanded in any of the complaints and each of these cases is in early stages of litigation, an informed assessment of the ultimate outcome of these cases cannot be made at this time. Management believes, however, that there are meritorious defenses to these lawsuits and intends to defend them vigorously.

The Company is commonly subject to various other pending and threatened legal actions arising from the conduct of its normal business activities. In the opinion of the management of the Company, the ultimate aggregate liability, if any, arising out of any pending or threatened action will not have a material adverse effect on the consolidated financial condition of the Company. At the present time, however, management is not in a position to determine whether the resolution of pending or threatened litigation will have a material effect on the Company's results of operations in any future reporting period.

NOTE K  
RELATED PARTY TRANSACTIONS

In the ordinary course of business, executive officers and directors of the Company may have credit card loans issued by the Company. Pursuant to the Company's policy, such loans are issued on the same terms as those prevailing at the time for comparable loans with unrelated persons and do not involve more than the normal risk of collectability.

Prior to November 22, 1994, and on a declining basis thereafter, Signet and its various subsidiaries provided significant financial and operational support to the Company, the estimated costs of which have been allocated to the Company. Since the Company operated as a division of Signet Bank/Virginia for all periods prior to November 22, 1994, these allocations do not necessarily represent expenses that would have been incurred directly by the Company had it operated on a stand-alone basis historically. The following table summarizes the effects of these allocations (including interest expense) and servicing income related to the retained credit card portfolio reflected in the financial statements. Revenues and expenses generated in 1995 from agreements with Signet through February 28, 1995, were immaterial.

	Year Ended December 31	
	1994	1993
Revenues:		
Loan servicing income pertaining to retained credit card portfolio	\$11,046	\$12,544
Expenses:		
Interest expense	67,161	67,994
Salaries and associate benefits	7,509	7,630
Data processing services	16,524	16,080
Contract termination	49,000	
Other	6,303	6,263

Incremental expenses, other than interest expense, that the Company would have incurred directly had it operated on a stand-alone basis are estimated to be \$6,000 (unaudited) annually for each of the years in the two year period ended December 31, 1994.

Premises and equipment with a net book value of \$21,800 were transferred from Signet on November 22, 1994.

Effective November 22, 1994, the Company entered into a Separation Agreement, Interim Service Agreements and long-term Intercompany Servicing Agreements, a Tax Sharing Agreement and an Employee Benefits Agreement ("Service Agreements"), which provide for certain ongoing operational and financial relationships between the Company and Signet that expire in 1996.

NOTE L  
SECURITIZATIONS

The Company securitized \$3,525,000 and \$2,393,937 of credit card receivables in 1995 and 1994, respectively, and currently has \$7,523,801 of investors' undivided interests in the receivables under securitizations outstanding at December 31, 1995, with expected maturities from 1996 to 2000. The income from all series is included in credit card servicing income.

The Company has entered into swaps to reduce the interest rate sensitivity associated with these securitizations. In 1995, the Company entered into swaps with notional amounts totaling \$591,000 which are scheduled to mature in 1998 and 1999 to coincide with the final payment date of a 1995 securitization. In 1994, the Company entered into swaps with notional amounts totaling \$539,000 which are scheduled to mature in 1997 to coincide with the

final payment date of the remaining term of a 1993 securitization. These swaps pay floating rates of three-month LIBOR (weighted average contractual rate of 5.78% and 5.80% at December 31, 1995 and 1994, respectively) and receive weighted average fixed rates of 7.23% and 6.74% at December 31, 1995 and 1994, respectively.

The terms of securitizations require the Company to maintain a certain level of assets, retained by the trust, to absorb potential credit losses. The amount available to absorb potential credit losses is included in accounts receivable from securitizations and is \$235,188 and \$129,410 at December 31, 1995 and 1994, respectively.

NOTE M  
SIGNIFICANT CONCENTRATION OF CREDIT RISK

The Company is active in originating credit card loans throughout the United States. The Company reviews each potential customer's credit application and evaluates the applicant's financial history and ability and willingness to repay. Loans are made primarily on an unsecured basis; however, certain loans require collateral in the form of cash deposits.

The geographic distribution of the Company's credit card loans was as follows:

	Year Ended December 31			
	1995		1991	
	LOANS	%	Loans	%
GEOGRAPHIC REGION:				
Northeast	\$2,310,138	22.12%	\$ 1,702,015	23.07%
Southeast	2,281,553	21.84	1,712,940	23.21
Central	2,926,157	28.01	1,929,068	26.14
Midwest	219,236	2.10	150,371	2.04
West	2,698,613	25.84	1,883,406	25.53
Other	9,783	.09	655	.01
	10,445,480	100.00%	7,378,455	100.00%
Less securitized balances	(7,523,801)		(5,150,000)	
Total loans	\$2,921,679		\$ 2,228,455	

NOTE N  
DISCLOSURES ABOUT FAIR VALUE OF FINANCIAL INSTRUMENTS

The following discloses the fair value of financial instruments at December 31, 1995 and 1994, whether or not recognized in the balance sheets, for which it is practical to estimate fair value. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. In that regard, the derived fair value estimates cannot be substantiated by comparison to independent markets and, in many cases, could not be realized in immediate settlement of the instrument. As required under generally accepted accounting principles, these disclosures exclude certain financial instruments and all nonfinancial instruments from its disclosure requirements. Accordingly, the aggregate fair value amounts presented do not represent the underlying value of the Company.

The following methods and assumptions were used by the Company in estimating the fair value at December 31, 1995 and 1994, for its financial instruments:

CASH AND DUE FROM BANKS: The carrying amount approximates fair value.

CASH EQUIVALENTS: The carrying amount of federal funds sold and interest-bearing deposits at other banks approximates fair value.

SECURITIES AVAILABLE FOR SALE: See Note B.

LOANS: The net carrying amount approximates fair value due to the relatively short average life and principally variable interest rates on these loans. This amount excludes any value related to account relationships.

INTEREST RECEIVABLE: The carrying amount approximates fair value.

INTEREST-BEARING DEPOSITS AND FEDERAL FUNDS PURCHASED: The carrying amount approximates fair value.

BORROWINGS: The carrying amount of the bank facility approximates fair value. The fair value of bank notes is \$2,553,000 and \$22,000, at December 31, 1995 and 1994, respectively.

INTEREST PAYABLE: The carrying amount approximates fair value.

INTEREST RATE SWAP AGREEMENTS: The fair value of these instruments of \$85,200 at December 31, 1995, is the estimated amount that the Company would have received, and \$12,800 at December 31, 1994, is the estimated amount that the Company would have paid to terminate the swap agreements at the respective dates, taking into account the forward yield curve and the creditworthiness of

the swap counterparties.

NOTE 0  
CAPITAL ONE FINANCIAL CORPORATION  
(PARENT COMPANY ONLY)  
CONDENSED FINANCIAL INFORMATION

	December 31	
Balance Sheets	1995	1994
Assets		
Cash and cash equivalents	\$ 7,792	\$ 13,884
Investment in subsidiaries	587,518	461,007
Other	3,881	720
Total assets	\$599,191	\$475,611
Liabilities		\$ 1,054
Stockholders' equity	\$599,191	474,557
Total liabilities and stockholders' equity	\$599,191	\$475,611

	YEAR ENDED DECEMBER 31 1995	Period from Inception (November 22, 1994) to December 31, 1994
Statements of Income		
Interest from temporary investments	\$ 560	\$ 79
Dividends from subsidiaries	11,000	
Non-interest expense	456	7
Income before income taxes and equity in undistributed earnings of subsidiaries	11,104	72
Income taxes	37	28
Equity in undistributed earnings of subsidiaries	11,067	44
Net income	\$ 126,511	\$11,073
Operating Activities:		
Net income	\$ 126,511	\$11,073
Adjustments to reconcile net income to net cash provided by operating activities:		
Equity in undistributed earnings of subsidiaries	(115,444)	(11,029)
Amortization of deferred compensation	4,020	3,715
Increase in other assets	(3,161)	(720)
(Decrease) increase in other liabilities	(1,054)	1,054
Net cash provided by operating activities	10,872	4,093
Investing Activities:		
Increase in investment in subsidiaries	(2,470)	(92,124)
Financing Activities:		
Proceeds from issuance of common stock	1,257	101,915
Proceeds from exercise of stock options	132	
Dividends paid	(15,883)	
Net cash (used for) provided by financing activities	(14,494)	101,915
(Decrease) increase in cash and cash equivalents	(6,092)	13,884
Cash and cash equivalents at beginning of period	13,884	
Cash and cash equivalents at end of period	\$ 7,792	\$13,884





## Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" in Amendment No. 1 to the Registration Statement (Form S-3 No. 333-3580) and related Prospectus of Capital One Financial Corporation pertaining to the registration of Debt Securities, Preferred Stock (including Depositary Shares) and Common Stock of Capital One Financial Corporation and to the incorporation by reference therein of our report dated January 23, 1996, with respect to the consolidated financial statements of Capital One Financial Corporation incorporated by reference in its Annual Report (Form 10-K) for the year ended December 31, 1995, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

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ERNST & YOUNG LLP

Washington, D.C.  
September 13, 1996