



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

**Form S-3**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**ITT CORPORATION**

(Exact name of registrant as specified in its charter)

**Indiana**  
(State or other jurisdiction of incorporation or organization)

**13-5158950**  
(I.R.S. Employer Identification Number)

**1133 Westchester Avenue,**  
**White Plains, New York 10604**  
**(914) 641-2000**  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Vincent A. Maffeo**  
**Senior Vice President and General Counsel**  
**1133 Westchester Avenue,**  
**White Plains, New York 10604**  
**(914) 641-2000**  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:  
**Gary L. Sellers**  
**Simpson Thacher & Bartlett LLP**  
**425 Lexington Avenue**  
**New York, New York 10017**  
**(212) 455-2000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

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

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

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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.  o

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.  o

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

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

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

Large accelerated filer

Accelerated filer  o

Non-accelerated filer  o  
(Do not check if smaller reporting company)

Smaller reporting company  o

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Note	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$1 par value per share	(1)	(1)	(1)	(2)
Preferred Stock	(1)	(1)	(1)	(2)
Debt Securities	(1)	(1)	(1)	(2)
Warrants to Purchase Debt Securities	(1)	(1)	(1)	(2)
Units	(1)	(1)	(1)	(2)

(1) Omitted pursuant to General Instructions II.E. of Form S-3. An indeterminate amount of common stock, debt securities, warrants to purchase debt securities and units are being registered as may from time to time be issued at indeterminate prices.

(2) In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee. Registration fees will be paid subsequently on a "pay as you go" basis.

PROSPECTUS



*Engineered for life*

## ITT Corporation

**Common Stock  
Preferred Stock  
Debt Securities  
Warrants to Purchase Debt Securities  
Units**

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ITT Corporation may offer from time to time common stock, preferred stock, debt securities, warrants to purchase debt securities or units. We will provide the specific terms of the securities in one or more supplements to this prospectus. This prospectus may not be used to offer and sell the securities unless accompanied by a prospectus supplement. A prospectus supplement may add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement, as well as the documents incorporated by reference in this prospectus and in any accompanying prospectus supplement, carefully before you invest.

**Investing in these securities involves risks. See the information included and incorporated by reference in this prospectus and the accompanying prospectus supplement for a discussion of the factors you should carefully consider before deciding to purchase these securities, including the information under “Risk Factors” in our most recent annual report on Form 10-K (as it may be updated in our most recent quarterly report on Form 10-Q) filed with the Securities and Exchange Commission.**

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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The date of this prospectus is April 28, 2009

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## TABLE OF CONTENTS

	<u>Page</u>
<a href="#">About This Prospectus</a>	ii
<a href="#">Where You Can Find More Information</a>	iii
<a href="#">Documents Incorporated by Reference</a>	iv
<a href="#">Forward-Looking and Cautionary Statements</a>	v
<a href="#">The Company</a>	1
<a href="#">Risk Factors</a>	1
<a href="#">Use of Proceeds</a>	1
<a href="#">Ratios of Earnings to Fixed Charges</a>	1
<a href="#">Description of Capital Stock</a>	2
<a href="#">Description of Debt Securities</a>	7
<a href="#">Description of Debt Warrants</a>	15
<a href="#">Description of Units</a>	16
<a href="#">Forms of Securities</a>	17
<a href="#">Plan of Distribution</a>	19
<a href="#">Legal Matters</a>	19
<a href="#">Experts</a>	19
<a href="#">EX-1.1: FORM OF UNDERWRITING AGREEMENT</a>	
<a href="#">EX-4.3: FORM OF INDENTURE</a>	
<a href="#">EX-5.1: OPINION OF SIMPSON THACHER &amp; BARTLETT LLP</a>	
<a href="#">EX-5.2: OPINION OF BAKER &amp; DANIELS LLP</a>	
<a href="#">EX-23.3: CONSENT OF DELOITTE &amp; TOUCHE LLP</a>	
<a href="#">EX-25.1: FORM T-1</a>	

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You should rely only on the information contained or incorporated by reference in this prospectus and in any accompanying prospectus supplement or in any related free writing prospectus. We have not authorized anyone to provide you with different information. This document may only be used where it is legal to sell these securities. You should only assume that the information contained or incorporated by reference in this prospectus or in any accompanying prospectus supplement or any related free writing prospectus is accurate as of the respective date on the front of those documents. Our business, financial condition, results of operations and prospects may have changed since that date. We are not making an offer of these securities in any jurisdiction where the offer is not permitted.

## ABOUT THIS PROSPECTUS

This prospectus is part of an automatic shelf registration statement that we filed with the Securities and Exchange Commission, or the SEC, as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended, or the Securities Act. By using an automatic shelf registration statement, we may, at any time and from time to time, sell common stock, preferred stock, debt securities, warrants to purchase debt securities and units under this prospectus in one or more offerings in an unlimited amount. As allowed by the SEC rules, this prospectus does not contain all of the information included in the registration statement. For further information, we refer to the registration statement, including its exhibits. Statements contained in this prospectus about the provisions or contents of any agreement or other document are not necessarily complete. If the SEC’s rules and regulations require that an agreement or document be filed as an exhibit to the registration statement, please see that agreement or document for a complete description of these matters.

This prospectus provides you with a general description of the securities we may offer. Each time we use this prospectus to offer securities, we will provide you with a prospectus supplement that will describe the specific amounts, prices and terms of the securities being offered. The prospectus supplement may also add, update or change information contained in this prospectus. Therefore, if there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement.

To understand the terms of our securities, you should carefully read this document and the applicable prospectus supplement. Together, they provide the specific terms of the securities we are offering. You should also read the documents we have referred you to under “Where You Can Find More Information” below for information on our company, the risks we face and our financial statements. The registration statement and exhibits can be read at the SEC’s website or at the SEC as described under “Where You Can Find More Information.”

Except as otherwise identified, references in this prospectus to the “Company,” “we,” “us” and “our” refer to ITT Corporation and its subsidiaries.

Trademarks and servicemarks in this prospectus and in any accompanying prospectus supplement are the property of, or licensed by, us or our subsidiaries.

References herein to “\$,” “dollars” and “U.S. dollars” are to United States dollars, and financial data included or incorporated by reference herein have been presented in accordance with accounting principles generally accepted in the United States of America.

**WHERE YOU CAN FIND MORE INFORMATION**

Pursuant to the requirements of the Exchange Act of 1934, as amended, or the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at [www.sec.gov](http://www.sec.gov) or at our website at [www.itt.com](http://www.itt.com) (as noted below, the information contained in, or that can be accessed through, our website is not a part of this prospectus or part of any prospectus supplement). You may also read and copy any document we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. In addition, you can inspect reports and other information we file at the office of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

You may also obtain copies of this information at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room.

Our SEC filings are also available at the office of the New York Stock Exchange. For further information on obtaining copies of our public filings at the New York Stock Exchange, you should call (212) 656-3000.

**DOCUMENTS INCORPORATED BY REFERENCE**

The SEC allows us to “incorporate by reference” into this prospectus information that we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede any inconsistent information in this prospectus and in our other filings with the SEC.

We incorporate by reference the following documents that we previously filed with the SEC (other than information in such documents that is deemed not to be filed), all of which are filed under SEC File No. 001-05672:

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2008;
- Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009;
- Our Current Reports on Form 8-K filed with the SEC on February 13, 2009 and March 9, 2009;
- Our Definitive Proxy Statement on Schedule 14A filed with the SEC on March 27, 2009; and
- The description of our common stock on Form 8-A/A filed with the SEC on April 28, 2009.

These documents contain important information about our business and our financial performance.

We also incorporate by reference any future filings we make with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, on or after the date of the filing of the registration statement and prior to the termination of the offering, all of which will be filed under SEC File No. 001-05672. Our future filings with the SEC will automatically update and supersede any inconsistent information in this prospectus.

You may obtain a free copy of these filings from us by telephoning or writing to us at the following address and telephone number:

ITT Corporation  
1133 Westchester Avenue  
White Plains, New York 10604  
Attention: Secretary  
Telephone: (914) 641-2000

## FORWARD-LOOKING AND CAUTIONARY STATEMENTS

Some of the information included or incorporated by reference in this prospectus and the applicable prospectus supplement contain forward-looking statements intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995 (“the Act”). These forward-looking statements include statements that describe our business strategy, outlook, objectives, plans, intentions or goals, and any discussion of future operating or financial performance. Whenever used, words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” “target” and other terms of similar meaning are intended to identify such forward-looking statements.

Forward-looking statements are uncertain and to some extent unpredictable, and involve known and unknown risks, uncertainties and other important factors that could cause actual results to differ materially from those expressed in, or implied from, such forward-looking statements. Factors that could cause results to differ materially from those anticipated include:

- economic, political and social conditions in the countries in which we conduct our businesses;
- changes in government defense budgets;
- decline in consumer spending;
- our ability to borrow or refinance our existing indebtedness and availability of liquidity sufficient to meet our needs;
- interest and foreign currency exchange rate fluctuations;
- competition and industry capacity and production rates;
- ability of third parties, including our commercial partners, financial institutions and insurers, to comply with their commitments to us;
- availability of adequate labor, commodities, supplies and raw materials;
- sales and revenues mix and pricing levels;
- acquisitions or divestitures;
- our ability to effect restructuring and cost reduction programs and realize savings from such actions;
- government regulations and compliance therewith;
- governmental investigations;
- changes in technology;
- potential future employee benefit plan contributions and other employment and pension matters;
- contingencies related to actual or alleged environmental contamination, claims and concerns;
- intellectual property matters;
- personal injury claims;
- changes in generally accepted accounting principles; and
- other factors set forth in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 and our other filings with the Securities and Exchange Commission.

We undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.



#### THE COMPANY

ITT Corporation is a global multi-industry leader in high-technology engineering and manufacturing engaged directly and through its subsidiaries. We generate revenue and cash through the design, manufacture, and sale of a wide-range of engineered products and the provision of services.

Our principal executive offices are located at 1133 Westchester Avenue, White Plains, New York 10604, our telephone number is (914) 641-2000 and our website is [www.itt.com](http://www.itt.com). The information contained in, or that can be accessed through, our website is not a part of this prospectus or any prospectus supplement.

#### RISK FACTORS

Our business is subject to uncertainties and risks. You should carefully consider and evaluate all of the information included and incorporated by reference in this prospectus and any accompanying prospectus supplement, including the risk factors incorporated by reference, as well as any risk factors we may describe in any subsequent periodic reports or information we file with the SEC. It is possible that our business, financial condition, liquidity or results of operations could be materially and adversely affected by any of these risks.

#### USE OF PROCEEDS

Unless we otherwise state in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities for general corporate purposes. General corporate purposes may include repayment of debt, additions to working capital, capital expenditures, investments in our subsidiaries, possible acquisitions and the repurchase, redemption or retirement of securities, including shares of our common stock. The net proceeds may be temporarily invested or applied to repay short-term or revolving debt prior to use.

#### RATIOS OF EARNINGS TO FIXED CHARGES

The following table sets forth our historical ratios of earnings to fixed charges for the periods indicated. This information should be read in conjunction with the consolidated financial statements and the accompanying notes incorporated by reference in this prospectus.

Earnings available for fixed charges consist of earnings from continuing operations before income taxes, minority interest and cumulative effect of accounting change(s) and fixed charges excluding capitalized interest, net of amortization, reduced by undistributed earnings of our less than 50% owned affiliates. Fixed charges consist of interest expense, amortization of debt discount and expenses and capitalized interest, plus that portion of rental expense estimated to be the equivalent of interest.

	Three Months Ended March 31,		Year Ended December 31,				
	2009	2008	2008	2007	2006	2005	2004
Ratio of earnings to fixed charges	4.22	3.83	4.88	5.09	5.36	5.49	6.29

## DESCRIPTION OF CAPITAL STOCK

### General

The following is a description of our capital stock. This description is not complete, and we qualify this description by referring to our restated articles of incorporation and our amended by-laws, both of which we incorporate by reference in this prospectus, and to the laws of the state of Indiana.

Our restated articles of incorporation authorize us to issue 500,000,000 shares of common stock, par value \$1.00 per share, and 50,000,000 shares of preferred stock, without par value.

### Common Stock

*Dividend Rights.* Under our restated articles of incorporation, holders of our common stock are entitled to receive any dividends our board of directors may declare on the common stock, subject to the prior rights of the preferred stock. The board of directors may declare dividends from funds legally available for this purpose.

*Voting Rights.* Our common stock has one vote per share. The holders of our common stock are entitled to vote on all matters to be voted on by shareholders. Our restated articles of incorporation do not provide for cumulative voting. This could prevent directors from being elected by a relatively small group of shareholders.

*Liquidation Rights.* After provision for payment of creditors and after payment of any liquidation preferences to holders of the preferred stock, if we liquidate, dissolve or are wound up, whether this is voluntary or not, the holders of our common stock will be entitled to receive on a pro rata basis all assets remaining.

*Other Rights.* Our common stock is not liable to further calls or assessment. The holders of our common stock are not currently entitled to subscribe for or purchase additional shares of our capital stock. Our common stock is not subject to redemption and does not have any conversion or sinking fund provisions.

### Preferred Stock

Our board of directors has the authority, without further action by shareholders, to issue up to 50,000,000 shares of preferred stock in one or more series. The holders of our preferred stock do not have the right to vote, except as our board of directors establishes, or as provided in our restated articles of incorporation or as determined by state law.

The board of directors has the authority to determine the terms of each series of preferred stock, within the limits of our restated articles of incorporation, our amended by-laws and the laws of the state of Indiana. These terms include the number of shares in a series, the consideration, dividend rights, liquidation preferences, terms of redemption, conversion rights and voting rights, if any.

### Effects on Our Common Stock if We Issue Preferred Stock

If we issue preferred stock, it may negatively affect the holders of our common stock. These possible negative effects include the following:

- diluting the voting power of shares of our common stock;
- affecting the market price of our common stock;
- delaying or preventing a change in control of ITT Corporation;
- making removal of our present management more difficult; or
- restricting dividends and other distributions on our common stock.

### **Provisions of Our Restated Articles of Incorporation and Amended By-Laws That Could Delay or Prevent a Change in Control**

Certain provisions of our restated articles of incorporation and amended by-laws may delay or make more difficult unsolicited acquisitions or changes of control of the Company. We believe that such provisions will enable us to develop our business in a manner that will foster our long-term growth without disruption caused by the threat of a takeover not deemed by our board of directors to be in the best interests of the Company and our shareholders. Such provisions could have the effect of discouraging third parties from making proposals involving an unsolicited acquisition or change of control of the Company, although a majority of our shareholders might consider such proposals, if made, desirable. Such provisions may also have the effect of making it more difficult for third parties to cause the replacement of our current management without the concurrence of our board of directors. These provisions include:

- the availability of capital stock for issuance from time to time at the discretion of our board of directors;
- the ability of our board of directors to increase the size of the board and to appoint directors to fill newly-created directorships;
- prohibitions against shareholders calling a special meeting of shareholders; and
- requirements for advance notice for raising business or making nominations at shareholders' meetings.

### **Authorized But Unissued Capital Stock**

The authorized but unissued shares of our common stock and preferred stock will be available for future issuance without shareholder approval. Indiana law does not require shareholder approval for any issuance of authorized shares. However, the listing requirements of the New York Stock Exchange, which would apply to us so long as our common stock remains listed on the New York Stock Exchange, require shareholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or then outstanding number of shares of our common stock. We may issue these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital or to facilitate corporate acquisitions.

Our board may be able to issue shares of unissued and unreserved common or preferred stock to persons friendly to current management. This issuance may render more difficult or discourage an attempt to obtain control of ITT Corporation by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management. This could possibly deprive our shareholders of opportunities to sell their shares of our stock at prices higher than prevailing market prices. Our board could also use these shares to dilute the ownership of persons seeking to obtain control of the Company.

### **Number of Directors; Filling of Vacancies**

Our amended by-laws provide that the board of directors will have at least 3 and at most 25 directors. The size of the board may be changed by a majority vote of the board of directors. A majority of the board determines the exact number of directors at any given time. The board fills any new directorships it creates and any vacancies, subject to the requirement provided in the amended by-laws that the majority of directors holding office immediately after such election be independent directors, as defined in the amended by-laws. Accordingly, our board may be able to prevent any shareholder from obtaining majority representation on the board by increasing the size of the board and filling the newly-created directorships with its own nominees.

### **Special Meetings**

Our restated articles of incorporation and amended by-laws provide that only the chairman of the board or a majority of our board may call a special meeting of shareholders. This provision may delay or prevent a shareholder from removing a director from the board or from gaining control of the board.

### **Advance Notice Provisions**

Our amended by-laws require that for a shareholder to nominate a director or bring other business before an annual meeting, the shareholder must give written notice, in proper form, to the Secretary of ITT Corporation not less than 120 days prior to the date corresponding to the date on which we first mailed our proxy materials for the prior year's annual meeting.

Only persons who are nominated by, or at the direction of, our board of directors, or who are nominated by a shareholder who has given timely written notice, in proper form, to the Secretary of ITT Corporation prior to a meeting at which directors are to be elected will be eligible for election as directors of ITT Corporation. The notice of any nomination for election as a director must set forth:

- the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated;
- a representation that the shareholder is a holder of record of our stock entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;
- a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons, naming such person or persons, pursuant to which the nomination or nominations are to be made by the shareholder;
- such other information regarding each nominee proposed by such shareholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated, by our board;
- the consent of each nominee to serve as a director if so elected; and
- if the shareholder intends to solicit proxies in support of such shareholder's nominee(s), a representation to that effect.

The notice to bring any other matter a shareholder proposes to bring before an annual meeting must also set forth:

- a brief description of the proposal and the reasons therefor;
- if the proposal involves an amendment to our restated articles of incorporation or amended by-laws, the language of the amendment;
- any material interest of the shareholder in the proposal; and
- if the shareholder intends to solicit proxies with respect to the proposal, a representation to that effect.

Our amended by-laws limit the business that may be conducted at a special meeting to the purposes stated in the notice of the meeting.

The advance notice provisions may delay a person from bringing matters before a shareholder meeting. The provisions may provide enough time for us to begin litigation or take other steps to respond to these matters, or to prevent them from being acted upon, if we find it desirable.

### **Certain Provisions of the Indiana Business Corporation Law**

As an Indiana corporation, we are governed by the Indiana Business Corporation Law, or the IBCL. Under specified circumstances, the following provisions of the IBCL may delay, prevent or make more difficult unsolicited acquisitions or changes of control of the Company. These provisions also may have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions which shareholders may otherwise deem to be in their best interest.

*Control Share Acquisitions.* Under Sections 23-1-42-1 to 23-1-42-11 of the IBCL, an acquiring person or group who makes a "control share acquisition" in an "issuing public corporation" may not exercise voting

rights on any “control shares” unless these voting rights are conferred by a majority vote of the disinterested shareholders of the issuing corporation at a special meeting of those shareholders held upon the request and at the expense of the acquiring person. If control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenters’ rights to receive the fair value of their shares pursuant to Section 23-1-44 of the IBCL.

Under the IBCL, “control shares” means shares acquired by a person that, when added to all other shares of the issuing public corporation owned by that person or in respect to which that person may exercise or direct the exercise of voting power, would otherwise entitle that person to exercise voting power of the issuing public corporation in the election of directors within any of the following ranges:

- one-fifth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more.

“Control share acquisition” means, subject to specified exceptions, the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares. For the purposes of determining whether an acquisition constitutes a control share acquisition, shares acquired within 90 days or under a plan to make a control share acquisition are considered to have been acquired in the same acquisition. “Issuing public corporation” means a corporation which is organized in Indiana and has (i) 100 or more shareholders, (ii) its principal place of business, its principal office or substantial assets within Indiana and (iii) (A) more than 10% of its shareholders resident in Indiana, (B) more than 10% of its shares owned by Indiana residents or (C) 10,000 shareholders resident in Indiana.

The above provisions do not apply if, before a control share acquisition is made, the corporation’s articles of incorporation or bylaws, including a board adopted by-law, provide that they do not apply. Our articles of incorporation and bylaws do not currently exclude us from the restrictions imposed by the above provisions.

*Certain Business Combinations.* Sections 23-1-43-1 to 23-1-43-24 of the IBCL restrict the ability of a “resident domestic corporation” to engage in any combinations with an “interested shareholder” for five years after the date the interested shareholder became such, unless the combination or the purchase of shares by the interested shareholder on the interested shareholder’s date of acquiring shares is approved by the board of directors of the resident domestic corporation before that date. If the combination was not previously approved, the interested shareholder may effect a combination after the five-year period only if that shareholder receives approval from a majority of the disinterested shares or the offer meets specified fair price criteria. For purposes of the above provisions, “resident domestic corporation” means an Indiana corporation that has 100 or more shareholders. “Interested shareholder” means any person, other than the resident domestic corporation or its subsidiaries, who is (1) the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the resident domestic corporation or (2) an affiliate or associate of the resident domestic corporation, which at any time within the five-year period immediately before the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding shares of the resident domestic corporation. The above provisions do not apply to corporations that so elect in an amendment to their articles of incorporation approved by a majority of the disinterest shares. That amendment, however, cannot become effective until 18 months after its passage and would apply only to share acquisitions occurring after its effective date. Our articles of incorporation do not exclude us from the restrictions imposed by the above provisions.

*Directors' Duties and Liability.* Under Section 23-1-35-1 of the IBCL, directors are required to discharge their duties:

- in good faith;
- with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- in a manner the directors reasonably believe to be in the best interests of the corporation.

However, the IBCL also provides that a director is not liable for any action taken as a director, or any failure to act, unless the director has breached or failed to perform the duties of the director's office and the action or failure to act constitutes willful misconduct or recklessness.

The exoneration from liability under the IBCL does not affect the liability of directors for violations of the federal securities laws.

Section 23-1-35-1 of the IBCL also provides that a board of directors, in discharging its duties, may consider, in its discretion, both the long-term and short-term best interests of the corporation, taking into account, and weighing as the directors deem appropriate, the effects of an action on the corporation's shareholders, employees, suppliers and customers and the communities in which offices or other facilities of the corporation are located and any other factors the directors consider pertinent. Directors are not required to consider the effects of a proposed corporate action on any particular corporate constituent group or interest as a dominant or controlling factor. If a determination is made with the approval of a majority of the disinterested directors of the board, that determination is conclusively presumed to be valid unless it can be demonstrated that the determination was not made in good faith after reasonable investigation. Section 23-1-35-1 specifically provides that specified judicial decisions in Delaware and other jurisdictions, which might be looked upon for guidance in interpreting Indiana law, including decisions that propose a higher or different degree of scrutiny in response to a proposed acquisition of the corporation, are inconsistent with the proper application of the business judgment rule under that section.

## DESCRIPTION OF DEBT SECURITIES

This prospectus describes certain general terms and provisions of the debt securities. The debt securities will be issued under an indenture between us and Union Bank, N.A., as trustee. When we offer to sell a particular series of debt securities, we will describe the specific terms for the securities in a supplement to this prospectus. The prospectus supplement will also indicate whether the general terms and provisions described in this prospectus apply to a particular series of debt securities.

We have summarized certain terms and provisions of the indenture. The summary is not complete. The indenture has been incorporated by reference as an exhibit to the registration statement for these securities that we have filed with the SEC. You should read the indenture for the provisions which may be important to you. The indenture is subject to and governed by the Trust Indenture Act of 1939, as amended.

The indenture does not limit the amount of debt securities which we may issue. We may issue debt securities up to an aggregate principal amount as we may authorize from time to time. The prospectus supplement will describe the terms of any debt securities being offered, including:

- classification as senior or subordinated debt securities;
- ranking of the specific series of debt securities relative to other outstanding indebtedness, including subsidiaries' debt;
- if the debt securities are subordinated, the aggregate amount of outstanding indebtedness, as of a recent date, that is senior to the subordinated securities, and any limitation on the issuance of additional senior indebtedness;
- the designation, aggregate principal amount and authorized denominations;
- the maturity date;
- the interest rate, if any, and the method for calculating the interest rate;
- the interest payment dates and the record dates for the interest payments;
- any mandatory or optional redemption terms or prepayment, conversion, sinking fund or exchangeability or convertibility provisions;
- the place where we will pay principal and interest;
- if other than denominations of \$1,000 or multiples of \$1,000, the denominations the debt securities will be issued in;
- whether the debt securities will be issued in the form of global securities or certificates;
- the inapplicability of and additional provisions, if any, relating to the defeasance of the debt securities;
- the currency or currencies, if other than the currency of the United States, in which principal and interest will be paid;
- any material United States federal income tax consequences;
- the dates on which premium, if any, will be paid;
- our right, if any, to defer payment of interest and the maximum length of this deferral period;
- any listing on a securities exchange;
- the initial public offering price; and
- other specific terms, including any additional events of default or covenants.

### Senior Debt

Senior debt securities will rank equally and pari passu with all other unsecured and unsubordinated debt of the Company.

### Subordinated Debt

Subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner set forth in the indenture, to all “senior indebtedness” of the Company. The indenture defines “senior indebtedness” as obligations or indebtedness of, or guaranteed or assumed by, the Company for borrowed money whether or not represented by bonds, debentures, notes or other similar instruments, and amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligation. “Senior indebtedness” does not include nonrecourse obligations, the subordinated debt securities or any other obligations specifically designated as being subordinate in right of payment to senior indebtedness. See the indenture, section 13.01.

In general, the holders of all senior indebtedness are first entitled to receive payment of the full amount unpaid on senior indebtedness before the holders of any of the subordinated debt securities or coupons are entitled to receive a payment on account of the principal or interest on the indebtedness evidenced by the subordinated debt securities in certain events. These events include:

- any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization or other similar proceedings which concern the Company or a substantial part of its property;
- a default having occurred for the payment of principal, premium, if any, or interest on or other monetary amounts due and payable on any senior indebtedness or any other default having occurred concerning any senior indebtedness, which permits the holder or holders of any senior indebtedness to accelerate the maturity of any senior indebtedness with notice or lapse of time, or both. Such an event of default must have continued beyond the period of grace, if any, provided for such event of default, and such an event of default shall not have been cured or waived or shall not have ceased to exist; or
- the principal of, and accrued interest on, any series of the subordinated debt securities having been declared due and payable upon an event of default pursuant to section 5.02 of the indenture. This declaration must not have been rescinded and annulled as provided in the indenture.

If this prospectus is being delivered in connection with a series of subordinated debt securities, the accompanying prospectus supplement or the information incorporated in this prospectus by reference will set forth the approximate amount of senior indebtedness outstanding as of the end of the most recent fiscal quarter.

### Events of Default

The indenture provides that, unless otherwise provided in a particular series of debt securities, the term “Event of Default” means:

- (1) default in paying interest on the debt securities when it becomes due and the default continues for a period of 30 days or more;
- (2) default in paying principal, or premium, if any, on the debt securities when due;
- (3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due, and such default continues for 30 days or more;
- (4) default in the performance, or breach, of any covenant in the indenture (other than defaults specified in clause (1), (2) or (3) above) and the default or breach continues for a period of 90 days or more after we receive written notice from the trustee or we and the trustee receive notice from the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series;



(5) certain events of bankruptcy, insolvency, reorganization, administration or similar proceedings with respect to the Company has occurred; or

(6) any other Events of Default set forth in the prospectus supplement.

If an Event of Default (other than an Event of Default specified in clause (5) with respect to the Company) under the indenture occurs with respect to the debt securities of any series and is continuing, then the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series may by written notice require us to repay immediately the entire principal amount of the outstanding debt securities of that series (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest and premium, if any.

If an Event of Default under the indenture specified in clause (5) with respect to the Company occurs and is continuing, then the entire principal amount of the outstanding debt securities (or such lesser amount as may be provided in the terms of the securities) will automatically become due and payable immediately without any declaration or other act on the part of the trustee or any holder.

After a declaration of acceleration, the holders of a majority in principal amount of outstanding debt securities of any series may rescind this accelerated payment requirement if all existing Events of Default, except for nonpayment of the principal and interest on the debt securities of that series that has become due solely as a result of the accelerated payment requirement, have been cured or waived and if the rescission of acceleration would not conflict with any judgment or decree. The holders of a majority in principal amount of the outstanding debt securities of any series also have the right to waive past defaults, except a default in paying principal or interest on any outstanding debt security, and except in respect of a covenant or a provision that cannot be modified or amended without the consent of all holders of the debt securities of that series.

Holders of at least 25% in principal amount of the outstanding debt securities of a series may seek to institute a proceeding only after they have notified the Trustee of a continuing Event of Default in writing and made a written request, and offered reasonable indemnity, to the trustee to institute a proceeding and the trustee has failed to do so within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in principal amount of the outstanding debt securities of that series. These limitations do not apply, however, to a suit instituted by a holder of a debt security for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

During the existence of an Event of Default, the trustee is required to exercise the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent man would under the circumstances in the conduct of that person's own affairs. If an Event of Default has occurred and is continuing, the trustee is not under any obligation to exercise any of its rights or powers at the request or direction of any of the holders unless the holders have offered to the trustee reasonable security or indemnity. Subject to certain provisions, the holders of a majority in principal amount of the outstanding debt securities of any series 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.

The trustee will, within 90 days after any default occurs, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. Unless there is a default in paying principal, interest or any premium when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders.

#### **Modification and Waiver**

The indenture may be amended or modified without the consent of any holder of debt securities in order to:

- evidence a succession to the Trustee;
- cure ambiguities, defects or inconsistencies or make any other change that does not adversely affect in any material respect the interests of any holder;

- provide for the assumption of our obligations in the case of a merger or consolidation or transfer of all or substantially all of our assets;
- make any change that would provide any additional rights or benefits to the holders of the debt securities of a series;
- add guarantors with respect to the debt securities of any series;
- secure the debt securities of a series;
- establish the form or forms of debt securities of any series; or
- maintain the qualification of the indenture under the Trust Indenture Act.

Other amendments and modifications of the indenture or the debt securities issued may be made with the consent of the holders of not less than a majority of the aggregate principal amount of the outstanding debt securities of each series affected by the amendment or modification. However, no modification or amendment may, without the consent of the holder of each outstanding debt security affected:

- reduce the principal amount, or extend the fixed maturity, of the debt securities;
- alter or waive the redemption provisions of the debt securities;
- change the currency in which principal, any premium or interest is paid;
- reduce the percentage in principal amount outstanding of debt securities of any series which must consent to an amendment, supplement or waiver or consent to take any action;
- impair the right to institute suit for the enforcement of any payment on the debt securities;
- waive a payment default with respect to the debt securities;
- reduce the interest rate or extend the time for payment of interest on the debt securities; or
- adversely affect the ranking of the debt securities of any series.

#### **Certain Covenants**

##### ***Limitation on Liens***

The indenture provides that with respect to senior debt securities, unless otherwise provided in a particular series of senior debt securities, we will not, and will not permit any of our restricted subsidiaries to, incur, suffer to exist or guarantee any debt secured by a lien on any principal property or on any shares of stock of (or other interests in) any of our restricted subsidiaries unless we or that first-mentioned restricted subsidiary secures or we cause such restricted subsidiary to secure the senior debt securities (and any of its or such restricted subsidiary's other debt, at its option or such restricted subsidiary's option, as the case may be, not subordinate to the senior debt securities), equally and ratably with (or prior to) such secured debt, for as long as such secured debt will be so secured.

These restrictions will not, however, apply to debt secured by:

- (1) any liens existing prior to the issuance of such senior debt securities;
- (2) any lien on property of or shares of stock of (or other interests in) or debt of any entity existing at the time such entity becomes a restricted subsidiary;
- (3) any liens on property, shares of stock of (or other interests in) or debt of any entity (a) existing at the time of acquisition of such property or shares (or other interests) (including acquisition through merger or consolidation), (b) to secure the payment of all or any part of the purchase price of such property or shares (or other interests) or the costs of construction or improvement of such property or (c) to secure any debt incurred prior to, at the time of, or within 180 days after the later of the acquisition, the completion of construction or the commencement of full operation of such property or within 180 days after the acquisition of such shares (or other interests) for the purpose of financing all or

any part of the purchase price of such property or shares (or other interests) or the costs of construction thereon;

- (4) any liens in favor of us or any of our restricted subsidiaries;
- (5) any liens in favor of, or required by contracts with, governmental entities; or
- (6) any extension, renewal, or refunding of liens referred to in any of the preceding clauses (1) through (5).

Notwithstanding the foregoing, we or any of our restricted subsidiaries may incur, suffer to exist or guarantee any debt secured by a lien on any principal property or on any shares of stock of (or other interests in) any of our restricted subsidiaries if, after giving effect thereto and together with the value of attributable debt outstanding pursuant to the second paragraph of the “— Limitation on Sale and Lease-Back Transactions” covenant below, the aggregate amount of such debt does not exceed 15% of our consolidated net tangible assets.

The indenture does not restrict the transfer by us of a principal property to any of our unrestricted subsidiaries or our ability to change the designation of a subsidiary owning principal property from a restricted subsidiary to an unrestricted subsidiary and, if we were to do so, any such unrestricted subsidiary would not be restricted from incurring secured debt nor would we be required, upon such incurrence, to secure the debt securities equally and ratably with such secured debt.

***Limitation on Sale and Lease-Back Transactions***

We will not enter into any sale and lease-back transaction with respect to any principal property, other than any such sale and lease-back transaction involving a lease for a term of not more than three years or any such sale and lease-back transaction between us and one of our restricted subsidiaries or between our restricted subsidiaries, unless: (a) we or such restricted subsidiary would be entitled to incur debt secured by a lien on the principal property involved in such sale and lease-back transaction at least equal in amount to the attributable debt with respect to such sale and lease-back transaction, without equally and ratably securing the debt securities, pursuant to the covenant described above under the caption “— Limitation on Liens”; or (b) the proceeds of such sale and lease-back transaction are at least equal to the fair market value of the affected principal property (as determined in good faith by our board of directors) and we apply an amount equal to the net proceeds of such sale and lease-back transaction within 180 days of such sale and lease-back transaction to any (or a combination) of (i) the prepayment or retirement of the debt securities, (ii) the prepayment or retirement (other than any mandatory retirement, mandatory prepayment or sinking fund payment or by payment at maturity) of other debt of us or of one of our restricted subsidiaries (other than debt that is subordinated to the debt securities or debt owed to us or one of our restricted subsidiaries) that matures more than 12 months after its creation or matures less than 12 months after its creation but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond 12 months from its creation or (iii) the purchase, construction, development, expansion or improvement of other comparable property.

Notwithstanding the restrictions in the preceding paragraph, we will be permitted to enter into sale and lease-back transactions otherwise prohibited by this covenant, the attributable debt with respect to which, together with all debt outstanding pursuant to the third paragraph of the “— Limitation on Liens” covenant above, without duplication, do not exceed 15% of consolidated net tangible assets measured at the closing date of the sale and lease-back transaction.

*Definitions.* The following are definitions of some terms used in the above description. We refer you to the indenture for a full description of all of these terms, as well as any other terms used herein for which no definition is provided.

“*attributable debt*” with regard to a sale and lease-back transaction with respect to any principal property means, at the time of determination, the present value of the total net amount of rent required to be paid under such lease during the remaining term thereof (including any period for which such lease has been extended), discounted at the rate of interest set forth or implicit in the terms of such lease (or, if not practicable to

determine such rate, the weighted average interest rate per annum borne by the securities then outstanding under the indenture) compounded semi-annually. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall be the lesser of (x) the net amount determined assuming termination upon the first date such lease may be terminated (in which case the net amount shall also include the amount of the penalty, but shall not include any rent that would be required to be paid under such lease subsequent to the first date upon which it may be so terminated) or (y) the net amount determined assuming no such termination.

“*consolidated net tangible assets*” means the total amount of our assets and our restricted subsidiaries’ assets minus:

- all applicable depreciation, amortization and other valuation reserves;
- all current liabilities of ours and our restricted subsidiaries (excluding any intercompany liabilities); and
- all goodwill, trade names, trademarks, patents, unamortized debt discount and expenses and other like intangibles, all as set forth on our and our restricted subsidiaries’ latest consolidated balance sheets prepared in accordance with U.S. GAAP.

“*debt*” means any indebtedness for borrowed money.

“*principal property*” means any single manufacturing or processing plant, office building or warehouse owned or leased by us or any of our restricted subsidiaries which has a gross book value in excess of 2% of our consolidated net tangible assets other than a plant, warehouse, office building, or portion thereof which, in the opinion of the Company’s Board of Directors, is not of material importance to the business conducted by the Company and its Restricted Subsidiaries as an entirety.

“*restricted subsidiary*” means, at any time, any subsidiary which at the time is not an unrestricted subsidiary of ours.

“*subsidiary*” means any entity, at least a majority of the outstanding voting stock of which shall at the time be owned, directly or indirectly, by us or by one or more of our subsidiaries, or both.

“*unrestricted subsidiary*” means any subsidiary of ours (not at the time designated as our restricted subsidiary) (1) the major part of whose business consists of finance, banking, credit, leasing, insurance, financial services or other similar operations, or any combination thereof, (2) substantially all the assets of which consist of the capital stock of one or more subsidiaries engaged in the operations referred to in the preceding clause (1), or (3) designated as an unrestricted subsidiary by our Board of Directors.

#### **Consolidation, Merger or Sale of Assets**

The indenture provides that we may consolidate or merge with or into, or convey or transfer all or substantially all of our assets to, any entity (including, without limitation, a limited partnership or a limited liability company); *provided that*:

- we will be the surviving corporation or, if not, that the successor will be a corporation that is organized and validly existing under the laws of any state of the United States of America or the District of Columbia and will expressly assume by a supplemental indenture our obligations under the indenture and the debt securities;
- immediately after giving effect to such transaction, no event of default, and no default or other event which, after notice or lapse of time, or both, would become an event of default, will have happened and be continuing; and
- we will have delivered to the trustee an opinion of counsel, stating that such consolidation, merger, conveyance or transfer complies with the indenture.

In the event of any such consolidation, merger, conveyance, transfer or lease, any such successor will succeed to and be substituted for us as obligor on the debt securities with the same effect as if it had been named in the indenture as obligor.

Unless otherwise disclosed in the applicable prospectus supplement, there are no other restrictive covenants contained in the Indenture. The Indenture does not contain any other provision that will restrict us from entering into one or more additional indentures providing for the issuance of debt securities or warrants, or from incurring, assuming, or becoming liable with respect to any indebtedness or other obligation, whether secured or unsecured, or from paying dividends or making other distributions on our capital stock, or from purchasing or redeeming our capital stock.

#### **Satisfaction, Discharge and Covenant Defeasance**

We may terminate our obligations under the indenture, when:

- either:
  - all debt securities of any series issued that have been authenticated and delivered have been delivered to the trustee for cancellation; or
  - all the debt securities of any series issued that have not been delivered to the trustee for cancellation have become due and payable, will become due and payable within one year, or are to be called for redemption within one year and we have made arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name and at our expense, and in each case, we have irrevocably deposited or caused to be deposited with the trustee sufficient funds to pay and discharge the entire indebtedness on the series of debt securities to pay principal, interest and any premium; and
- we have paid or caused to be paid all other sums then due and payable under the indenture; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

We may elect to have our obligations under the indenture discharged with respect to the outstanding debt securities of any series ("legal defeasance"). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the indenture, except for:

- the rights of holders of the debt securities to receive principal, interest and any premium when due;
- our obligations with respect to the debt securities concerning issuing temporary debt securities, registration of transfer of debt securities, mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payment for security payments held in trust;
- the rights, powers, trusts, duties and immunities of the trustee; and
- the defeasance provisions of the indenture.

In addition, we may elect to have our obligations released with respect to certain covenants in the indenture ("covenant defeasance"). Any omission to comply with these obligations will not constitute a default or an event of default with respect to the debt securities of any series. In the event covenant defeasance occurs, certain events, not including non-payment, bankruptcy and insolvency events, described under "Events of Default" above will no longer constitute an event of default for that series.

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding debt securities of any series:

- we must irrevocably have deposited or caused to be deposited with the trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the debt securities of a series:
  - money in an amount;

- U.S. government obligations (or equivalent government obligations in the case of debt securities denominated in other than U.S. dollars or a specified currency) that will provide, not later than one day before the due date of any payment, money in an amount; or
- a combination of money and U.S. government obligations (or equivalent government obligations, as applicable),
- in each case sufficient, in the written opinion (with respect to U.S. or equivalent government obligations or a combination of money and U.S. or equivalent government obligations, as applicable) of a nationally recognized firm of independent registered public accountants to pay and discharge, and which shall be applied by the trustee to pay and discharge, all of the principal (including mandatory sinking fund payments), interest and any premium at due date or maturity;
- in the case of legal defeasance, we have delivered to the trustee an opinion of counsel stating that, under then applicable Federal income tax law, the holders of the debt securities of that series will not recognize income, gain or loss for federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same federal income tax as would be the case if the deposit, defeasance and discharge did not occur;
- in the case of covenant defeasance, we have delivered to the trustee an opinion of counsel to the effect that the holders of the debt securities of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same federal income tax as would be the case if the deposit and covenant defeasance did not occur;
- no event of default or default with respect to the outstanding debt securities of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is continuing at any time on or before the 91st day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 91st day;
- the legal defeasance or covenant defeasance will not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all debt securities of a series were in default within the meaning of such Act;
- the legal defeasance or covenant defeasance will not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which we are a party;
- the legal defeasance or covenant defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent with respect to the defeasance or covenant defeasance have been complied with.

**Concerning our Relationship with the Trustee**

We and our subsidiaries maintain ordinary banking relationships and credit facilities with Union Bank and its affiliates.

#### DESCRIPTION OF DEBT WARRANTS

We may issue warrants to purchase our debt securities. Warrants may be issued independently or together with any other securities and may be attached to, or separate from, such securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a warrant agent. The terms of any warrants to be issued and a description of the material provisions of the applicable warrant agreement will be set forth in the applicable prospectus supplement.

The applicable prospectus supplement will describe the following terms of any warrants in respect of which this prospectus is being delivered:

- the title of such warrants;
- the aggregate number of such warrants;
- the price or prices at which such warrants will be issued;
- the currency or currencies in which the price of such warrants will be payable;
- the price at which and the currency or currencies in which the securities or other rights purchasable upon exercise of such warrants may be purchased;
- the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;
- if applicable, the minimum or maximum amount of such warrants which may be exercised at any one time;
- if applicable, the designation and terms of the securities with which such warrants are issued and the number of such warrants issued with each such security;
- if applicable, the date on and after which such warrants and the related securities will be separately transferable;
- information with respect to book-entry procedures, if any;
- if applicable, a discussion of any material United States Federal income tax considerations; and
- any other terms of such warrants, including terms, procedures and limitations relating to the exchange and exercise of such warrants.

#### DESCRIPTION OF UNITS

As specified in the applicable prospectus supplement, we may issue units consisting of one or more warrants, debt securities, shares of common or preferred stock or any combination of such securities. The applicable prospectus supplement will describe:

- the terms of the units and of the warrants, debt securities, common stock and preferred stock comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;
- a description of the terms of any unit agreement governing the units; and
- a description of the provisions for the payment, settlement, transfer or exchange of the units.



## FORMS OF SECURITIES

Each debt security, warrant, and unit will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities. Certificated securities in definitive form and global securities will be issued in registered form. Definitive securities name you or your nominee as the owner of the security, and in order to transfer or exchange these securities or to receive payments other than interest or other interim payments, you or your nominee must physically deliver the securities to the trustee, registrar, paying agent or other agent, as applicable. Global securities name a depository or its nominee as the owner of the debt securities, warrants, or units represented by these global securities. The depository maintains a computerized system that will reflect each investor's beneficial ownership of the securities through an account maintained by the investor with its broker/dealer, bank, trust company or other representative, as we explain more fully below.

### Global Securities

*Registered Global Securities.* We may issue the registered debt securities, warrants, and units in the form of one or more fully registered global securities that will be deposited with a depository or its custodian identified in the applicable prospectus supplement and registered in the name of that depository or its nominee. In those cases, one or more registered global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of the securities to be represented by registered global securities. Unless and until it is exchanged in whole for securities in definitive registered form, a registered global security may not be transferred except as a whole by and among the depository for the registered global security, the nominees of the depository or any successors of the depository or those nominees.

If not described below, any specific terms of the depository arrangement with respect to any securities to be represented by a registered global security will be described in the prospectus supplement relating to those securities. We anticipate that the following provisions will apply to all depository arrangements.

Ownership of beneficial interests in a registered global security will be limited to persons, called participants, that have accounts with the depository or persons that may hold interests through participants. Upon the issuance of a registered global security, the depository will credit, on its book-entry registration and transfer system, the participants' accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the depository, with respect to interests of participants, and on the records of participants, with respect to interests of persons holding through participants. The laws of some states may require that some purchasers of securities take physical delivery of these securities in definitive form. These laws may impair your ability to own, transfer or pledge beneficial interests in registered global securities.

So long as the depository, or its nominee, is the registered owner of a registered global security, that depository or its nominee, as the case may be, will be considered the sole owner or holder of the securities represented by the registered global security for all purposes under the applicable indenture, warrant agreement or unit agreement. Except as described below, owners of beneficial interests in a registered global security will not be entitled to have the securities represented by the registered global security registered in their names, will not receive or be entitled to receive physical delivery of the securities in definitive form and will not be considered the owners or holders of the securities under the applicable indenture, warrant agreement or unit agreement. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depository for that registered global security and, if that person is not a participant, on the procedures of the participant through which the person owns its interest, to exercise any rights of a holder under the applicable indenture, warrant agreement or unit agreement. We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under the applicable indenture, warrant agreement or unit agreement, the depository for the registered global security would

authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal, premium, if any, and interest payments on debt securities, and any payments to holders with respect to warrants or units, represented by a registered global security registered in the name of a depository or its nominee will be made to the depository or its nominee, as the case may be, as the registered owner of the registered global security. None of the Company, the trustee, the warrant agents, the unit agents or any other agent of the Company, agent of the trustee or agent of the warrant agents or unit agents will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depository for any of the securities represented by a registered global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or other property to holders on that registered global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in that registered global security as shown on the records of the depository. We also expect that payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of those participants.

If the depository for any of these securities represented by a registered global security is at any time unwilling or unable to continue as depository or ceases to be a clearing agency registered under the Securities Exchange Act of 1934, and a successor depository registered as a clearing agency under the Securities Exchange Act of 1934 is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the depository. Any securities issued in definitive form in exchange for a registered global security will be registered in the name or names that the depository gives to the relevant trustee, warrant agent, unit agent or other relevant agent of ours or theirs. It is expected that the depository's instructions will be based upon directions received by the depository from participants with respect to ownership of beneficial interests in the registered global security that had been held by the depository.

#### **PLAN OF DISTRIBUTION**

We may sell the securities offered pursuant to this prospectus in any of the following ways:

- directly to one or more purchasers;
- through agents;
- through underwriters, brokers or dealers; or
- through a combination of any of these methods of sale.

We will identify the specific plan of distribution, including any underwriters, brokers, dealers, agents or direct purchasers and their compensation in a prospectus supplement.

#### **LEGAL MATTERS**

The validity of the securities offered by this prospectus and any prospectus supplement will be passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York and Baker & Daniels LLP. Counsel for any underwriters, agents or dealers will be named in the accompanying prospectus supplement.

#### **EXPERTS**

The financial statements incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K, and the effectiveness of the Company's internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION**

The following table sets forth the costs and expenses payable by us in connection with the sale and distribution of the securities being registered.

SEC Registration Fee	(1)
Rating Agency Fees	(2)
Accounting Fees and Expenses	(2)
Legal Fees and Expenses	(2)
Printing Expenses	(2)
Trustee's Fees and Expenses	(2)
Miscellaneous	(2)
Total	(2)

- (1) In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the Registration Fee  
(2) An estimate of the aggregate amount of these expenses will be reflected in the applicable prospectus supplement.

**ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers, and controlling persons pursuant to the following provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

The Indiana Business Corporation Law ("IBCL"), the provisions of which we are governed by, empowers an Indiana corporation to indemnify present and former directors, officers, employees, or agents or any person who may have served at the request of the corporation as a director, officer, employee, or agent of another corporation ("Eligible Persons") against liability incurred in any proceeding, civil or criminal, in which the Eligible Person is made a party by reason of being or having been in any such capacity, or arising out of his status as such, if the individual acted in good faith and reasonably believed that (a) the individual was acting in the best interests of the corporation, or (b) if the challenged action was taken other than in the individual's official capacity as an officer, director, employee or agent, the individual's conduct was at least not opposed to the corporation's best interests, or (c) if in a criminal proceeding, either the individual had reasonable cause to believe his conduct was lawful or no reasonable cause to believe his conduct was unlawful.

The IBCL further empowers a corporation to pay or reimburse the reasonable expenses incurred by an Eligible Person in connection with the defense of any such claim, including counsel fees; and, unless limited by its articles of incorporation, the corporation is required to indemnify an Eligible Person against reasonable expenses if he is wholly successful in any such proceeding, on the merits or otherwise. Under certain circumstances, a corporation may pay or reimburse an Eligible Person for reasonable expenses prior to final disposition of the matter. Unless a corporation's articles of incorporation provide otherwise, an Eligible Person may apply for indemnification to a court which may order indemnification upon a determination that the Eligible Person is entitled to mandatory indemnification for reasonable expenses or that the Eligible Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances without regard to whether his actions satisfied the appropriate standard of conduct.

Before a corporation may indemnify any Eligible Person against liability or reasonable expenses under the IBCL, a quorum consisting of directors who are not parties to the proceeding must (1) determine the indemnification is permissible in the specific circumstances because the Eligible Person met the requisite

standard of conduct, (2) authorize the corporation to indemnify the Eligible Person and (3) if appropriate, evaluate the reasonableness of expenses for which indemnification is sought. If it is not possible to obtain a quorum of uninvolved directors, the foregoing action may be taken by a committee of two or more directors who are not parties to the proceeding, special legal counsel selected by the Board or such a committee, or by the shareholders of the corporation.

In addition to the foregoing, the IBCL states that the indemnification it provides shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision of a corporation's articles of incorporation or by-laws, resolution of the board of directors or shareholders, or any other authorization adopted after notice by a majority vote of all the voting shares then issued and outstanding. The IBCL also empowers an Indiana corporation to purchase and maintain insurance on behalf of any Eligible Person against any liability asserted against or incurred by him in any capacity as such, or arising out of his status as such, whether or not the corporation would have had the power to indemnify him against such liability.

Our restated articles of incorporation provide that no director or officer shall be personally liable to the Company or any of our shareholders for damages for breach of fiduciary duty as a director or officer, except for liability for breach of duty if such breach constitutes willful misconduct or recklessness or for the payment of distributions to shareholders in violation of the IBCL.

Our amended by-laws provide for mandatory indemnification, to the fullest extent permitted by law, of our directors and officers against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including any action, suit or proceeding by or in the right of the Company, in which such person may have become involved by reason of being or having been a director, officer, employee or agent. The right to indemnification is a contract right and includes the right to advancement of expenses in accordance with specified procedures.

The rights to indemnification provided by our restated articles of incorporation and amended by-laws are not exclusive of any other rights to which any indemnified person may otherwise be entitled.

We have entered into indemnification agreements with certain of our directors, pursuant to which we have agreed to indemnify and hold harmless, to the fullest extent permitted by applicable law and our amended by-laws, each such director against any and all expenses, liabilities or losses asserted against or incurred by the director in his capacity as a director of the Company or arising out of his status in such capacity. The indemnification agreements set forth certain procedures that will apply in the event of a claim for indemnification thereunder. In addition, the agreements provide for the advancement of expenses incurred by a director, subject to certain exceptions, in connection with any action, suit or proceeding covered by the agreement. We will not be liable for payments in respect of a director under the agreements in certain circumstances including, but not limited to, acts of such director involving intentional misconduct or a knowing violation of law, acts which were known or believed by such director to be opposed to our best interests and transactions from which such director derived an improper personal benefit.

We have purchased directors' and officers' liability insurance, the effect of which is to indemnify our directors and officers and the directors and officers of our subsidiaries against certain losses caused by errors, misstatement or misleading statements, wrongful acts, omissions, neglect or breach of duty by them or similar matters claimed against them in their capacities as directors or officers. This insurance is subject to various deductibles and exclusions from coverage.

**ITEM 16. EXHIBITS**

- 1.1 Form of Underwriting Agreement (filed herewith).
- 1.2\* Form of Distribution Agreement.
- 4.1 ITT Corporation's Articles of Amendment of the Restated Articles of Incorporation, effective as of May 13, 2008 (incorporated by reference to Exhibit 3.1 of ITT Corporation's Form 8-K Current Report dated May 14, 2008).

4.2	ITT Corporation's By-laws, as amended May 13, 2008 (incorporated by reference to Exhibit 3.2 of ITT Corporation's Form 8-K Current Report dated May 14, 2008).
4.3	Form of Indenture (filed herewith).
4.4*	Form of Debt Securities.
4.5*	Form of Warrant Agreement.
4.6*	Form of Warrant Certificate
4.7*	Form of Unit Agreement
5.1	Opinion of Simpson Thacher & Bartlett LLP (filed herewith).
5.2	Opinion of Baker & Daniels LLP (filed herewith).
12.1	Computation of ratios of earnings to fixed charges (incorporated herein by reference to Exhibit 12.1 to ITT Corporation's Annual Report on Form 10-K filed on February 25, 2009).
23.1	Consent of Simpson Thacher & Bartlett LLP (included in Exhibit 5.1).
23.2	Consent of Baker & Daniels LLP (included in Exhibit 5.2).
23.3	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm (filed herewith).
24.1	Powers of Attorney (filed herewith).
25.1	Statement of Eligibility and Qualification of Trustee on Form T-1 under the Trust Indenture Act of 1939, as amended, for the Debt Securities (filed herewith).

\* To be filed by amendment or as an exhibit to a document to be incorporated by reference herein in connection with an offering of the offered securities.

**ITEM 17. UNDERTAKINGS**

The undersigned registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this 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 end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act 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; and

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

*provided, however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in the periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered

therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

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

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

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

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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

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

(d)(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(2) For purposes of determining any liability under the Securities Act of 1933, 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.



**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of White Plains, State of New York on the 28<sup>th</sup> day of April, 2009.

**ITT CORPORATION**

By: /s/ Kathleen S. Stolar  
Name: Kathleen S. Stolar  
Title: Vice President, Secretary and Associate General Counsel

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Denise L. Ramos, Donald E. Foley and Kathleen S. Stolar and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her in his or her name, place and stead, in any and all capacity, in connection with this registration statement, including to sign and file in the name and on behalf of the undersigned as director or officer of the registrant (1) any and all amendments or supplements (including any and all stickers and post-effective amendments) to this registration statement, with all exhibits thereto, and other documents in connection therewith, and (2) any and all additional registration statements, and any and all amendments thereto, relating to the same offering of securities as those that are covered by this registration statement that are filed pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, with the Securities and Exchange Commission and any applicable securities exchange or securities self-regulatory body, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and things requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities on April 23, 2009.

<u>Signature</u>	<u>Title</u>
<u>/s/ Steven R. Loranger</u> Steven R. Loranger	Chairman, President and Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Denise L. Ramos</u> Denise L. Ramos	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
<u>/s/ Janice M. Klettner</u> Janice M. Klettner	Vice President and Chief Accounting Officer (Principal Accounting Officer)
<u>/s/ Curtis J. Crawford</u> Curtis J. Crawford	Director
<u>/s/ Christina A. Gold</u> Christina A. Gold	Director

<u>Signature</u>	<u>Title</u>
/s/ Ralph F. Hake _____ Ralph F. Hake	Director
/s/ John J. Hamre _____ John J. Hamre	Director
/s/ Paul J. Kern _____ Paul J. Kern	Director
/s/ Frank T. MacInnis _____ Frank T. MacInnis	Director
/s/ Surya N. Mohapatra _____ Surya N. Mohapatra	Director
/s/ Linda S. Sanford _____ Linda S. Sanford	Director
/s/ Markos I. Tambakeras _____ Markos I. Tambakeras	Director

## ITT CORPORATION

## Debt Securities

Form of Underwriting Agreement Standard Provisions

From time to time, ITT Corporation, an Indiana corporation (the "**Company**"), may enter into one or more underwriting agreements in the form of Annex A hereto that incorporate by reference these Standard Provisions (collectively with these Standard Provisions, an "**Underwriting Agreement**") that provide for the sale of the securities designated in such Underwriting Agreement (the "**Securities**") to the several Underwriters named therein (the "**Underwriters**"), for whom the Underwriters named therein shall act as representatives (the "**Representatives**"). The Underwriting Agreement, including these Standard Provisions, is sometimes referred to herein as this "**Agreement**". The Securities will be issued pursuant to a base indenture to be dated as of \_\_\_\_\_, 2009 (the "**Base Indenture**") between the Company and Union Bank, N.A., as trustee (the "**Trustee**"), as it may be amended or supplemented by one or more supplemental indentures (each, a "**Supplemental Indenture**" and, together with the Base Indenture, the "**Indenture**") between the Company and the Trustee.

1. **Registration Statement.** The Company has prepared and filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Securities Act**"), a registration statement on Form S-3 (File No. \_\_\_\_), including a prospectus (the "**Base Prospectus**"), relating to the debt securities to be issued from time to time by the Company. The Company has also filed, or proposes to file, with the Commission pursuant to Rule 424 under the Securities Act a prospectus supplement specifically relating to the Securities (the "**Prospectus Supplement**"). The registration statement, as amended at the time it becomes effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness ("**Rule 430 Information**"), is referred to herein as the "**Registration Statement**"; and as used herein, the term "**Prospectus**" means the Base Prospectus as supplemented by the prospectus supplement specifically relating to the Securities in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities and the term "**Preliminary Prospectus**" means the preliminary prospectus supplement specifically relating to the Securities together with the Base Prospectus. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the "**Rule 462 Registration Statement**"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus. References herein to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents

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incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act which were filed under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (the “**Exchange Act**”) on or before the effective date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Prospectus, as the case may be. The terms “supplement,” “amendment” and “amend” as used herein with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed by the Company under the Exchange Act subsequent to the effective date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Prospectus, as the case may be, deemed to be incorporated by reference therein. For purposes of this Agreement, the term “**Effective Time**” means the effective date of the Registration Statement with respect to the offering of Securities, as determined for the Company pursuant to Section 11 of the Securities Act and Item 512 of Regulation S-K, as applicable.

At or prior to the time when sales of the Securities will be first made (the “**Time of Sale**”), the Company will prepare certain information (collectively, the “**Time of Sale Information**”) which will be identified in Schedule 3 to the Underwriting Agreement for such offering of Securities as constituting the Time of Sale Information.

2. Purchase of the Securities by the Underwriters. (a) The Company agrees to issue and sell the Securities to the several Underwriters named in the Underwriting Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Securities set forth opposite such Underwriter’s name in the Underwriting Agreement at the purchase price set forth in the Underwriting Agreement.

(b) Payment for and delivery of the Securities will be made at the time and place set forth in the Underwriting Agreement. The time and date of such payment and delivery is referred to herein as the “**Closing Date**”.

(c) The Company acknowledges and agrees that the Underwriters named in the Underwriting Agreement are acting solely in the capacity of an arm’s length contractual counterparty to the Company with respect to any offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, no such Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and such Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by such Underwriters named in the Underwriting Agreement of the Company, the transactions contemplated thereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

3. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter that:

(a) *Registration Statement and Prospectus.* The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened in writing by the Commission; as of the Effective Time, the Registration Statement complied in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the “**Trust Indenture Act**”), and did not or will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date, the Prospectus did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act or (ii) any statements or omissions in the Registration Statement and the Prospectus and any amendment or supplement thereto made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein.

(b) *Time of Sale Information.* The Time of Sale Information, at the Time of Sale and at the Closing Date did not and will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in such Time of Sale Information. No statement of material fact included in the Prospectus has been omitted from the Time of Sale Information and no statement of material fact included in the Time of Sale Information that is required to be included in the Prospectus has been omitted therefrom.

(c) *Issuer Free Writing Prospectus.* The Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared,

made, used, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any “written communication” (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clauses (i), (ii) and (iii) below) an “**Issuer Free Writing Prospectus**”) other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act, (ii) the Preliminary Prospectus, (iii) the Prospectus, (iv) the documents listed on Schedule 3 to the Underwriting Agreement as constituting the Time of Sale Information and (v) any electronic road show or other written communications, in each case approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433) filed in accordance with the Securities Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, or filed prior to the first use of such Issuer Free Writing Prospectus, did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in any Issuer Free Writing Prospectus.

(d) *Incorporated Documents.* The documents incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Information, when filed with the Commission (after giving effect to any amendment or supplement filed with the Commission prior to the Time of Sale), conformed or will conform, as the case may be, in all material respects with the requirements of the Exchange Act and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) *Financial Statements.* The financial statements and the related notes thereto included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby, and any supporting schedules to such financial statements included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; and the other financial information included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus has been derived from the accounting records of the Company and

its subsidiaries and presents fairly the information shown thereby; and the pro forma financial information and the related notes thereto included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus have been prepared in accordance with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and the assumptions underlying such pro forma financial information are reasonable and are set forth in the Registration Statement, the Time of Sale Information and the Prospectus.

(f) *No Material Adverse Change.* Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus, (i) there has not been any material adverse change in the capital stock or long-term debt of the Company or any of its subsidiaries, or any extraordinary dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any adverse development involving the Company that would reasonably be expected to result in a prospective material adverse change, in or affecting the business, properties, management, financial position or results of operations of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole; and (iii) neither the Company nor any of its subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except in each case described in this paragraph (f) as otherwise disclosed in the Registration Statement, the Time of Sale Information and the Prospectus.

(g) *Organization and Good Standing.* The Company and each of its subsidiaries listed in Schedule 5 to this Agreement (“**Significant Subsidiaries**”) have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified, in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under the Securities (a “**Material Adverse Effect**”).

(h) *Capitalization.* All the outstanding shares of capital stock or other equity interests of each Significant Subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable (except, in the case of any foreign subsidiary, for directors’ qualifying shares) and are owned directly or indirectly by

the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(i) *Due Authorization.* The Company has all requisite corporate power and authority to execute and deliver this Agreement, the Securities and the Indenture (collectively, the “**Transaction Documents**”) and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been duly and validly taken.

(j) *The Indenture.* The Base Indenture has been duly authorized, executed and delivered by the Company and has been duly qualified under the Trust Indenture Act and constitutes a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally or by equitable principles relating to enforceability (collectively, the “**Enforceability Exceptions**”).

(k) *The Securities.* The Securities have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(l) *Underwriting Agreement.* The Underwriting Agreement has been duly authorized, executed and delivered by the Company.

(m) *Descriptions of the Transaction Documents.* Each Transaction Document conforms in all material respects to the description thereof contained in the Registration Statement, the Time of Sale Information and the Prospectus.

(n) *No Violation or Default.* Neither the Company nor any of its Significant Subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any of its Significant Subsidiaries is bound or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.



(o) *No Conflicts.* The execution, delivery and performance by the Company of each of the Transaction Documents, the issuance and sale of the Securities and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Significant Subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any of its Significant Subsidiaries is bound or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or any of its Significant Subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Material Adverse Effect.

(p) *No Consents Required.* No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of each of the Transaction Documents, the issuance and sale of the Securities and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, except for such consents, approvals, authorizations, orders and registrations or qualifications (i) as have been obtained under the Securities Act and the Trust Indenture Act and (ii) as may be required under applicable state securities laws in connection with the purchase and distribution of the Securities by the Underwriters.

(q) *Legal Proceedings.* Except as described in the Registration Statement, the Time of Sale Information and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, would reasonably be expected to have a Material Adverse Effect; no such investigations, actions, suits or proceedings are threatened in writing or, to the knowledge of the Company, contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that are required under the Securities Act to be described in the Registration Statement or the Prospectus that are not so described in the Registration Statement, the Time of Sale Information and the Prospectus and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement and described in the Registration Statement or the Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Time of Sale Information and the Prospectus.

(r) *Independent Accountants.* Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(s) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Registration Statement, the Time of Sale Information and the Prospectus, will not be an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, "**Investment Company Act**").

(t) *Status under the Securities Act.* The Company is not an "ineligible issuer" and is a "well-known seasoned issuer", in each case as defined under the Securities Act, in each case at the times specified in the Securities Act in connection with the offering of the Securities.

(u) *Title to Real and Personal Property.* The Company and its Significant Subsidiaries have good and marketable title in fee simple to, or have valid rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its Significant Subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its Significant Subsidiaries or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(v) *Title to Intellectual Property.* The Company and its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses; and the conduct of their respective businesses will not conflict in any material respect with any such rights of others, and the Company and its subsidiaries have not received any notice of any claim of infringement or conflict with any such rights of others; except, in each case described in this paragraph (v), as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(w) *Taxes.* The Company and its subsidiaries have paid all federal, state, local and foreign taxes and filed all tax returns required to be paid or filed through the date hereof; and except as otherwise disclosed in the Registration Statement, the Time

of Sale Information and the Prospectus, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets, in each case, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(x) *Licenses and Permits.* The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Registration Statement, the Time of Sale Information and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect; and except as described in the Registration Statement, the Time of Sale Information and the Prospectus, neither the Company nor any of its subsidiaries has received written notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course, in each case, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(y) *Compliance With Environmental Laws.* Except as described in the Registration Statement, the Time of Sale Information and the Prospectus: (i) the Company and its subsidiaries (x) are, and at all prior times during the relevant time periods specified in applicable statutes of limitations were, in compliance with any and all applicable federal, state, local and foreign laws rules, regulations, requirements, decisions and orders relating to the protection of the environment, natural resources or hazardous or toxic substances or wastes, pollutants or contaminants, including exposure thereto (collectively, “**Environmental Laws**”); (y) have received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (z) have not received written notice of any actual or potential liability under or relating to any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants and have no knowledge of any event or condition that would reasonably be expected to result in any such notice; and (ii) to the knowledge of the Company, there are no costs, liabilities or obligations associated with Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants of or relating to the Company or its subsidiaries, except in the case of each of (i) and (ii) above, for any such failure to comply with, or failure to receive required permits, licenses or approvals, or cost, liability or obligation as would not, individually or in the aggregate, have a Material Adverse Effect and (iii) there are no proceedings that are pending, or that are known to be contemplated, against the Company or any of its subsidiaries under any Environmental Laws in which a governmental entity is also a party, other than such proceedings regarding which it is

reasonably believed no monetary sanctions on the Company or its subsidiaries of \$100,000 or more will be imposed.

(z) *Disclosure Controls.* The Company and its subsidiaries maintain an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(aa) *Accounting Controls.* The Company maintains systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company’s assets that could have a material effect on the financial statements. Except as described in the Registration Statement, the Time of Sale Information and the Prospectus, there are no material weaknesses in the Company’s internal controls.

(bb) *Insurance.* The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are adequate to protect the Company and its subsidiaries and their respective businesses; and neither the Company nor any of its subsidiaries has (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business, in each case, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

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

(dd) *Compliance with OFAC.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(ee) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries nor, to the best knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; in each case, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(ff) *Sarbanes-Oxley Act.* There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

4. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Filings with the Commission.* The Company will (i) pay the registration fees for this offering within the time period required by Rule 456(b)1(i) under the Securities Act (without giving effect to the proviso therein) and in any event prior to the

Closing Date and (ii) file the Prospectus in a form approved by the Underwriters with the Commission pursuant to Rule 424 under the Securities Act not later than the close of business on the second business day following the date of determination of the public offering price of the Securities or, if applicable, such earlier time as may be required by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act. The Company will file any Issuer Free Writing Prospectus (including the Term Sheet in the form of Schedule 4 to the Underwriting Agreement) to the extent required by Rule 433 under the Securities Act; and the Company will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 10:00 A.M., New York City time, on the business day that is two days following the date of this Agreement in such quantities as the Representatives may reasonably request.

(b) *Delivery of Copies.* The Company will deliver, without charge, to each Underwriter during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto) and each Issuer Free Writing Prospectus (if applicable) as the Representatives may reasonably request. As used herein, the term "**Prospectus Delivery Period**" means such period of time after the first date of the public offering of the Securities a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by any Underwriter or dealer.

(c) *Amendments or Supplements; Issuer Free Writing Prospectuses.* Until the termination of the Prospectus Delivery Period, before making, preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not make, prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably objects unless, in the case of a filing, the Company is required by law to make such filing.

(d) *Notice to the Representatives.* Until the termination of the Prospectus Delivery Period, the Company will advise the Representatives promptly, and confirm such advice in writing, (i) when any amendment to the Registration Statement has been filed or becomes effective; (ii) when any supplement to the Prospectus or any amendment to the Prospectus or any Issuer Free Writing Prospectus has been filed; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (iv) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the

Securities Act; (v) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Time of Sale Information or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; (vi) of the receipt by the Company of any notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Time of Sale Information.* If at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading or (ii) it is necessary to amend or supplement the Time of Sale Information to comply with law, the Company will immediately notify the Underwriters thereof and as promptly as reasonably practicable prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Time of Sale Information as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Time of Sale Information will comply with law.

(f) *Ongoing Compliance.* If during the Prospectus Delivery Period (i) any event shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will immediately notify the Underwriters thereof and as promptly as reasonably practicable prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law.

(g) *Blue Sky Compliance.* The Company will use its reasonable efforts to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(h) *Earning Statement.* The Company will make generally available to its security holders and the Representatives as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the “effective date” (as defined in Rule 158) of the Registration Statement.

(i) *Clear Market.* During the period from the date hereof through and including the Closing Date or such later date as is specified in the Underwriting Agreement, the Company will not, without the prior written consent of the Representatives, offer, sell, contract to sell or otherwise dispose of any debt securities issued or guaranteed by the Company and having a tenor of more than one year.

(j) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Securities as described in the Time of Sale Information and the Prospectus under the heading “Use of proceeds”.

(k) *No Stabilization.* The Company will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(l) *Filing of Exchange Act Documents.* The Company will file when due all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act during the Prospectus Delivery Period.

(m) *Record Retention.* The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

5. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that

(a) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the



Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus that, solely a result of use by such underwriter, would not trigger an obligation to file such free writing prospectus with the Commission pursuant to Rule 433, (ii) any Issuer Free Writing Prospectus listed on Schedule 3 to the Underwriting Agreement or prepared pursuant to Section 3(c) or Section 4(c) above (including any electronic road show), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an “**Underwriter Free Writing Prospectus**”).

(b) Notwithstanding the foregoing the Underwriters may use a term sheet substantially in the form of Schedule 4 to the Underwriting Agreement without the consent of the Company.

(c) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriters’ Obligations. The obligation of each Underwriter to purchase Securities on the Closing Date as provided herein is subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) **Registration Compliance; No Stop Order**. If a post-effective amendment to the Registration Statement is required to be filed under the Securities Act, such post-effective amendment shall have become effective, and the Representatives shall have received notice thereof, not later than 5:00 P.M., New York City time, on the date of the Underwriting Agreement; if applicable, the Rule 462(b) Registration Statement shall have become effective by 10:00 a.m. New York City time on the business day following the date of the Underwriting Agreement; no order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose, pursuant to Rule 401(g)(2) or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives.

(b) **Representations and Warranties**. The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date.

(c) *No Downgrade.* Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded the Securities or any other debt securities of or guaranteed by the Company or any of its subsidiaries by any “nationally recognized statistical rating organization”, as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of the Securities or of any other debt securities of or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(f) hereof shall have occurred or shall exist, which event or condition is not described in the Time of Sale Information (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

(e) *Officer’s Certificate.* The Representatives shall have received on and as of the Closing Date a certificate of an executive officer of the Company who has specific knowledge of the Company’s financial matters and is satisfactory to the Representatives (i) confirming that such officer has carefully reviewed the Registration Statement, the Time of Sale Information and the Prospectus and, to the best knowledge of such officer and on behalf of the Company and not in his or her individual capacity, the representations set forth in Sections 3(a) and 3(b) hereof are true and correct, (ii) confirming that the other representations and warranties of the Company in this Agreement are true and correct and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and (iii) to the effect set forth in paragraphs (a), (c) and (d) above.

(f) *Comfort Letters from Deloitte & Touche LLP.* On the date of this Agreement and on the Closing Date, Deloitte & Touche LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants’ “comfort letters” to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus; provided that the letter delivered on the Closing Date shall use a “cut-off” date no more than three business days prior to the Closing Date.

(g) *Opinion and Negative Assurance Letter of Counsel for the Company.* Simpson Thacher & Bartlett LLP, counsel for the Company, shall have furnished to the

Representatives, at the request of the Company, their written opinion and negative assurance letter, dated the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annexes B-1 and B-2 hereto.

(h) *Opinion of Indiana Counsel for the Company.* Baker & Daniels LLP, Indiana counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion, dated the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex C hereto.

(i) *Opinion of General Counsel of the Company.* Mr. Vincent A. Maffeo, Senior Vice President and General Counsel of the Company, shall have furnished to the Representatives, at the request of the Company, his written opinion, dated the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex D hereto.

(j) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date an opinion and 10b-5 Statement of Davis Polk & Wardwell, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(k) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date, prevent the issuance or sale of the Securities; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date, prevent the issuance or sale of the Securities.

(l) *Good Standing.* The Representatives shall have received on and as of the Closing Date satisfactory evidence of the good standing of the Company and its Significant Subsidiaries in jurisdictions set forth on Schedule 5 hereto, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(m) *Additional Documents.* On or prior to the Closing Date, the Company shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein.

(b) *Indemnification of the Company.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, it being understood and agreed that the only such information consists of the information identified in the Underwriting Agreement as being provided by the Underwriters.

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the "**Indemnified Person**") shall promptly notify the person against whom such indemnification may be sought (the "**Indemnifying Person**") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 7 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall

not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 7. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 7 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of counsel related to such proceeding as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary, (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such Underwriter shall be designated in writing by the Representatives and any such separate firm for the Company, its directors, its officers who signed the Registration Statement and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall

contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the Company on the one hand and the Underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

8. Termination. This Agreement may be terminated in the absolute discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on the New York Stock Exchange; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

9. Defaulting Underwriter. (a) If, on the Closing Date, any Underwriter defaults on its obligation to purchase the Securities that it has agreed to purchase hereunder, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Securities by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Securities on such terms. If other persons become obligated or agree to purchase the Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "**Underwriter**" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in the Underwriting Agreement that, pursuant to this Section 9, purchases Securities that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remains unpurchased does not exceed one-eleventh of the aggregate principal amount of all the Securities, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Securities that such Underwriter agreed to purchase hereunder plus such Underwriter's pro rata share (based on the principal amount of Securities that such Underwriter agreed to purchase hereunder) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remains unpurchased exceeds one-eleventh of the aggregate principal amount of all the Securities, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 9 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 10 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

10. Payment of Expenses. (a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Transaction Documents; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Representatives may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Underwriters); (vi) any fees charged by rating agencies for rating the Securities; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (viii) all expenses and application fees incurred in connection with any filing with, and clearance of any offering by, the National Association of Securities Dealers, Inc.; and (ix) all expenses incurred by the Company in connection with any "road show" presentation to potential investors.

(b) If (i) this Agreement is terminated pursuant to Section 8, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Securities because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.



(c) Except as set forth in this Section 10, the Underwriters shall be responsible for their fees and expenses related to the offering of the Securities.

11. **Persons Entitled to Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to herein, and the affiliates of each Underwriter referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

12. **Survival.** The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of the Company or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company or the Underwriters.

13. **Certain Defined Terms.** For purposes of this Agreement, (a) except where otherwise expressly provided, the term “**affiliate**” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “**business day**” means any day other than a day on which banks are permitted or required to be closed in New York City and (c) the term “**subsidiary**” has the meaning set forth in Rule 405 under the Securities Act.

14. **Miscellaneous.** (a) *Authority of the Representatives.* Any action by the Underwriters hereunder may be taken by the Representatives on behalf of the Underwriters, and any such action taken by the Representatives shall be binding upon the Underwriters.

(b) *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives at the addresses set forth in the Underwriting Agreement. Notices to the Company shall be given to it at 1133 Westchester Avenue, White Plains, NY 10604, fax: 914-696-2970; Attention: General Counsel, or if different, to the address set forth in the Underwriting Agreement.

(c) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(d) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(e) *Headings*. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

[Form of Underwriting Agreement]

Underwriting Agreement

\_\_, 20\_\_

[Name &amp; Address of Underwriter(s)]

Ladies and Gentlemen:

ITT Corporation, an Indiana corporation (the "**Company**"), proposes to issue and sell to the several Underwriters listed in Schedule 1 hereto (the "**Underwriters**"), for whom you are acting as representatives (the "**Representatives**"), \$\_\_ principal amount of its \_\_% Senior Notes due \_\_\_\_ (the "**Securities**") having the terms set forth in Schedule 2 hereto. The Securities will be issued pursuant to an indenture, dated as of \_\_, 2009 (the "**Indenture**"), between the Company and Union Bank, N.A., as trustee (the "**Trustee**").

The Company agrees to issue and sell the Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Securities set forth opposite such Underwriter's name in Schedule 1 hereto at a price equal to \_\_% of the principal amount of the Securities, plus accrued interest, if any, from \_\_\_\_\_ to the Closing Date (as defined

below). The Company will not be obligated to deliver any of the Securities except upon payment for all the Securities to be purchased as provided herein.

The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Time of Sale Information and the Prospectus. Schedule 3 hereto sets forth the Time of Sale Information made available at the Time of Sale. The Company acknowledges and agrees that the Underwriters may offer and sell Securities to or through any affiliate of an Underwriter and that any such affiliate may offer and sell Securities purchased by it to or through any Underwriter.

Payment for and delivery of the Securities shall be made at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017 at 10:00 A.M., New York City time, on \_\_\_\_\_, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing.

Payment for the Securities shall be made by wire transfer in immediately available funds to the account(s) specified by the Company to the Representatives against delivery to the nominee of The Depository Trust Company, for the account of the Underwriters, of one or more global notes representing the Securities (collectively, the "**Global Note**"), with any transfer taxes payable in connection with the sale of the Securities duly paid by the Company. The Global Note will be made available for inspection by the Representatives not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date.

The Company and the Underwriters acknowledge and agree that the only information relating to any Underwriter that has been furnished to the Company in writing by any Underwriter through the Representatives expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto) any Issuer Free Writing Prospectus or any Time of Sale Information and any Preliminary Prospectus consists of the following: the [sixth] paragraph in the "Underwriting" section of the Preliminary Prospectus and the Prospectus relating to stabilizing transactions.

All provisions contained in the document entitled ITT Corporation Debt Securities Underwriting Agreement Standard Provisions are incorporated by reference herein in their entirety and shall be deemed to be a part of this Underwriting Agreement to the same extent as if such provisions had been set forth in full herein, except that if any term defined in such Underwriting Agreement Standard Provisions is otherwise defined herein, the definition set forth herein shall control.

This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

ITT CORPORATION

By \_\_\_\_\_  
Name:  
Title:

Accepted:

For themselves and on behalf of the  
several Underwriters listed  
in Schedule 1 hereto.

By \_\_\_\_\_  
Name:  
Title:

Underwriter

Principal Amount of  
Securities

Total

\$

Representatives and Addresses for Notices:

Certain Terms of the Securities:

Title of Securities:

Aggregate Principal Amount of Securities: \$ \_\_\_\_\_

Maturity Date: \_\_\_\_\_

Interest Rate: \_\_\_\_\_%

Interest Payment Dates: \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, \_\_\_\_\_

Record Dates: \_\_\_\_\_ and \_\_\_\_\_

Redemption Provisions:

**Time of Sale Information**

1. Preliminary Prospectus Supplement dated \_\_\_\_\_ ,
2. An Issuer Free Writing Prospectus substantially in the form set forth in Schedule 4



ITT Corporation

Pricing Term Sheet

\_\_\_\_\_ % Notes due \_\_\_\_\_

Issuer:	ITT Corporation
Principal Amount:	\$ _____
Security Type:	Senior Note
Maturity:	_____
Coupon:	_____ %
Price to Public:	_____ %
Yield to Maturity:	_____ %
Spread to Benchmark Treasury:	_____ %
Benchmark Treasury:	_____
Benchmark Treasury Spot and Yield:	_____ %
Interest Payment Dates:	_____ and _____, commencing _____
Make-Whole Call:	Treasury Rate plus _____ basis points
Trade Date:	
Settlement Date:	
Denominations:	\$2,000 and integral multiples of \$1,000 in excess thereof
Ratings:	
CUSIP/ISIN:	
Joint Book-Running Managers:	
Co-Managers:	

Note: Ratings are not a recommendation to purchase, hold or sell the notes, inasmuch as the ratings do not comment as to market price or suitability for a particular investor. The ratings are based on current information furnished to the rating agencies by the issuer and information obtained by the rating agencies from other sources. The ratings are only accurate as of the date hereof and may be changed, superseded or withdrawn as a result of changes in, or unavailability of, such information.

**The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the related preliminary prospectus supplement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus and the related prospectus supplement if you request it by calling Citigroup Global Markets Inc. toll free at 1-877-858-5407 or J.P. Morgan Securities Inc. collect at 212-834-4533.**

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

## Significant Subsidiaries

Name	Jurisdiction of Organization
EDO Corporation	New York
International Standard Electric Corporation	Delaware
ITT Delaware Investments, Inc.	Delaware
ITT Manufacturing Enterprises	Delaware
ITT Water Technology Inc.	Delaware
ITT Water Technology Delaware, Inc.	Delaware
ITT International SARL	Luxembourg
ITT Industries SARL	Luxembourg
ITT Industries Holdings SARL	Luxembourg
ITT Industries Luxembourg SARL	Luxembourg
ITT Water & Wastewater AB	Sweden
ITT Industries Holdings AB	Sweden

Form of Opinion of Counsel for the Company

Form of Negative Assurance Letter of Counsel for the Company



Form of Opinion of General Counsel of the Company

ITT CORPORATION

and

UNION BANK, N.A., as Trustee

Form of Indenture

Dated as of ,

Providing for Issuance of Debt Securities

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TABLE OF CONTENTS

PAGE

ARTICLE 1  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions	1
Section 1.02. Officers' Certificates and Opinions	9
Section 1.03. Form of Documents Delivered to Trustee	10
Section 1.04. Acts of Securityholders	10
Section 1.05. Notices, etc., to Trustee and Company	12
Section 1.06. Notice to Securityholders; Waiver	12
Section 1.07. Conflict with Trust Indenture Act	12
Section 1.08. Effect of Headings and Table of Contents	13
Section 1.09. Successors and Assigns	13
Section 1.10. Separability Clause	13
Section 1.11. Benefits of Indenture	13
Section 1.12. Governing Law	13
Section 1.13. Counterparts	13
Section 1.14. Judgment Currency	13
Section 1.15. Legal Holidays	14

ARTICLE 2  
SECURITY FORMS

Section 2.01. Forms Generally	14
Section 2.02. Forms of Securities	14
Section 2.03. Securities in Global Form	15
Section 2.04. Form of Trustee's Certificate of Authentication	15

ARTICLE 3  
THE SECURITIES

Section 3.01. General Title; General Limitations; Issuable in Series; Terms of Particular Series	15
Section 3.02. Denominations and Currency	19
Section 3.03. Execution, Authentication and Delivery, and Dating	20
Section 3.04. Temporary Securities	22
Section 3.05. Registration, Transfer and Exchange	22
Section 3.06. Mutilated, Destroyed, Lost and Stolen Securities	25
Section 3.07. Payment of Interest; Interest Rights Preserved	26
Section 3.08. Persons Deemed Owners	27
Section 3.09. Cancellation	28
Section 3.10. Computation of Interest	28
Section 3.11. CUSIP Numbers	28

ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. Satisfaction and Discharge of Indenture	28
Section 4.02. Discharge and Defeasance	30
Section 4.03. Covenant Defeasance	30
Section 4.04. Conditions to Defeasance or Covenant Defeasance	31
Section 4.05. Application of Trust Money; Excess Funds	33
Section 4.06. Paying Agent to Repay Moneys Held	34
Section 4.07. Return of Unclaimed Amounts	34
Section 4.08. Reinstatement	34

ARTICLE 5  
REMEDIES

Section 5.01. Events of Default	34
Section 5.02. Acceleration of Maturity; Rescission, and Annulment	36
Section 5.03. Collection of Indebtedness and Suits for Enforcement by Trustee	37
Section 5.04. Trustee May File Proofs of Claim	38
Section 5.05. Trustee May Enforce Claims Without Possession of Securities	39
Section 5.06. Application of Money Collected	39
Section 5.07. Limitation on Suits	39
Section 5.08. Unconditional Right of Securityholders to Receive Principal, Premium, and Interest	40
Section 5.09. Restoration of Rights and Remedies	40
Section 5.10. Rights and Remedies Cumulative	40
Section 5.11. Delay or Omission Not Waiver	41
Section 5.12. Control by Securityholders	41
Section 5.13. Waiver of Past Defaults	41
Section 5.14. Undertaking for Costs	41
Section 5.15. Waiver of Stay or Extension Laws	42

ARTICLE 6  
THE TRUSTEE

Section 6.01. Certain Duties and Responsibilities of Trustee	42
Section 6.02. Notice of Defaults	43
Section 6.03. Certain Rights of Trustee	44
Section 6.04. Not Responsible for Recitals or Issuance of Securities	45
Section 6.05. May Hold Securities	45
Section 6.06. Money Held in Trust	45
Section 6.07. Compensation and Reimbursement	46
Section 6.08. Disqualification; Conflicting Interests	46
Section 6.09. Corporate Trustee Required; Eligibility	46
Section 6.10. Resignation and Removal; Appointment of Successor	47
Section 6.11. Acceptance of Appointment by Successor	48

	PAGE
Section 6.12. Merger, Conversion, Consolidation or Succession to Business	49
Section 6.13. Preferential Collection of Claims Against Company	50
Section 6.14. Appointment of Authenticating Agent	50
ARTICLE 7	
SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY	
Section 7.01. Company to Furnish Trustee Names and Addresses of Securityholders	52
Section 7.02. Preservation of Information; Communications to Securityholders	52
Section 7.03. Reports by Trustee	53
Section 7.04. Reports by Company	54
ARTICLE 8	
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER	
Section 8.01. Company May Consolidate, etc., Only on Certain Terms	54
Section 8.02. Successor Corporation Substituted	55
ARTICLE 9	
SUPPLEMENTAL INDENTURES	
Section 9.01. Supplemental Indentures Without Consent of Securityholders	56
Section 9.02. Supplemental Indentures With Consent of Securityholders	57
Section 9.03. Execution of Supplemental Indentures	58
Section 9.04. Effect of Supplemental Indentures	59
Section 9.05. Conformity With the Trust Indenture Act	59
Section 9.06. Reference in Securities to Supplemental Indentures	59
ARTICLE 10	
COVENANTS	
Section 10.01. Payment of Principal, Premium and Interest	59
Section 10.02. Maintenance of Office or Agency	59
Section 10.03. Money or Security Payments to Be Held in Trust	60
Section 10.04. Certificate to Trustee	61
Section 10.05. Corporate Existence	61
Section 10.06. Waiver of Certain Covenants	61
Section 10.07. Limitation on Liens	61
Section 10.08. Limitation on Sale and Lease-Back Transactions	62
ARTICLE 11	
REDEMPTION OF SECURITIES	
Section 11.01. Applicability of Article	63
Section 11.02. Election to Redeem; Notice to Trustee	64

	<u>PAGE</u>
Section 11.03. Selection by Trustee of Securities to be Redeemed	64
Section 11.04. Notice of Redemption	64
Section 11.05. Deposit of Redemption Price	65
Section 11.06. Securities Payable on Redemption Date	65
Section 11.07. Securities Redeemed in Part	66
Section 11.08. Provisions with Respect to any Sinking Funds	66

ARTICLE 12  
REPAYMENT AT OPTION OF HOLDERS

Section 12.01. Applicability of Article	68
Section 12.02. Repayment of Securities	68
Section 12.03. Exercise of Option	68
Section 12.04. When Securities Presented for Repayment Become Due and Payable	68
Section 12.05. Securities Repaid in Part	69

ARTICLE 13  
SUBORDINATION OF SUBORDINATED SECURITIES

Section 13.01. Agreement to Subordinate	69
Section 13.02. Payment on Dissolution, Liquidation or Reorganization; Default on Senior Indebtedness	69
Section 13.03. Payment Prior to Dissolution or Default	72
Section 13.04. Securityholders Authorize Trustee to Effectuate Subordination of Securities	72
Section 13.05. Right of Trustee to Hold Senior Indebtedness	73
Section 13.06. Article 13 Not to Prevent Events of Default	73
Section 13.07. No Fiduciary Duty of Trustee to Holders of Senior Indebtedness	73

THIS INDENTURE, between ITT Corporation, an Indiana corporation (hereinafter called the "**Company**") having its principal office at 1133 Westchester Avenue, White Plains, New York 10604, and Union Bank, N.A., a national banking association, as trustee (hereinafter called the "**Trustee**"), is made and entered into as of this            day of           , 2009.

**Recitals of the Company**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its unsecured debentures, notes, bonds, and other evidences of indebtedness, to be issued in one or more fully registered series.

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

**Agreements of the Parties**

To set forth or to provide for the establishment of the terms and conditions upon which the Securities (as hereinafter defined) are and are to be authenticated, issued, and delivered, and in consideration of the premises thereof, and the purchase of Securities by the Holders (as hereinafter defined) thereof, it is mutually covenanted and agreed as follows, for the equal and proportionate benefit of all Holders from time to time of the Securities or of any series thereof, as the case may be:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* For all purposes of this Indenture and of any indenture supplemental hereto, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article 1 have the meanings assigned to them in this Article 1, and include the plural as well as the singular;
  - (b) all other terms used herein which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;
  - (c) 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
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hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; and

(d) all references in this instrument to designated "**Articles**", "**Sections**" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Indenture as originally executed. The words "herein", "hereof", and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, or other subdivision.

"**Act**", when used with respect to any Securityholder (as hereinafter defined), has the meaning specified in Section 1.04.

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

"**applicants**" has the meaning specified in Section 7.02.

"**Attributable Debt**" with regard to a sale and lease-back transaction with respect to any Principal Property means, at the time of determination, the present value of the total net amount of rent required to be paid under such lease during the remaining term thereof (including any period for which such lease has been extended), discounted at the rate of interest set forth or implicit in the terms of such lease (or, if not practicable to determine such rate, the weighted average interest rate per annum borne by all Outstanding Securities) compounded semi-annually. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall be the lesser of (x) the net amount determined assuming termination upon the first date such lease may be terminated (in which case the net amount shall also include the amount of the penalty, but shall not include any rent that would be required to be paid under such lease subsequent to the first date upon which it may be so terminated) or (y) the net amount determined assuming no such termination.

"**Authenticating Agent**" means any Person authorized by the Trustee to authenticate Securities of one or more series under Section 6.14.

"**Authentication Order**" has the meaning specified in Section 3.03.

"**Board of Directors**" means (i) the board of directors of the Company, (ii) any duly authorized committee of that board, or (iii) any officer, director, or authorized representative of the Company, in each case duly authorized by such Board to act hereunder.

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

“**Business Day**” means (except, with respect to any particular series of Securities, as may be otherwise provided in the form of such Securities) any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions are authorized or required by law, regulation, or executive order to be closed.

“**Chairman**” means the Company’s Chairman of the Board of Directors.

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

“**Company**” means ITT Corporation, unless and until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Company**” shall mean such successor corporation.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order signed in the name of the Company by its Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Senior Vice President, or any Vice President (as hereinafter defined), or by any other officer or officers of the Company pursuant to an applicable Board Resolution, and delivered to the Trustee.

“**Consolidated Net Tangible Assets**” means the total amount of assets (less applicable depreciation, amortization, and other valuation reserves) of the Company and its Restricted Subsidiaries, after deducting therefrom (i) all current liabilities of the Company and its Restricted Subsidiaries (excluding any such liabilities that are intercompany items) and (ii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on the latest consolidated balance sheet of the Company and its Restricted Subsidiaries prepared in accordance with generally accepted accounting principles.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 551 Madison Avenue, 11<sup>th</sup> Floor, New York, New York 10022.

“**corporation**” means a corporation, association, company, joint-stock company, limited liability company or business trust.

“**Covenant Defeasance**” has the meaning specified in Section 4.03.

“**Debt**” means any indebtedness for borrowed money.

“**Defaulted Interest**” has the meaning specified in Section 3.07.

“**Defeasance**” has the meaning specified in Section 4.02.

“**Depository**” means with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person designated as Depository by the Company pursuant to Section 3.01, unless and until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Depository**” shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, “**Depository**” as used with respect to the Securities of any such series shall mean the “**Depository**” with respect to the Securities of that series.

“**Entity**” means any corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust or unincorporated organization.

“**Equivalent Government Securities**” means, in relation to Securities denominated in a currency other than U.S. dollars, securities of the government that issued the currency in which such Securities are denominated or securities of government agencies backed by the full faith and credit of such government.

“**Event of Default**” has the meaning specified in Article 5.

“**Exchange Act**” has the meaning specified in Section 3.03.

“**Holder**”, “**Securityholder**” and “**Holder of Securities**” means a Person in whose name a Security is registered in the Security Register (as hereinafter defined).

“**Indenture**” means this instrument as originally executed or 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 shall include the terms of any particular series of Securities established as contemplated by Section 3.01.

“**Interest Payment Date**”, when used with respect to any series of Securities, means any date on which an installment of interest on those Securities is scheduled to be paid.

“**Investment Company Act**” has the meaning specified in Section 4.04.

“**Judgment Currency**” has the meaning specified in Section 1.14.



“**Lien**” has the meaning specified in Section 10.07.

“**Maturity**” means, when used with respect to any Security, the date on which the principal amount outstanding under such Security or an installment of principal amount outstanding under such Security becomes due and payable, as therein or herein provided, whether on the Scheduled Maturity Date (as hereinafter defined), by declaration of acceleration, call for redemption, or otherwise.

“**Officers’ Certificate**” means a certificate signed by any two of the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Senior Vice President, any Vice President, the Treasurer, and any Assistant Treasurer of the Company, or by any other officer or officers of the Company pursuant to an applicable Board Resolution, and delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion of counsel to the Company, which counsel may be an employee of the Company or other counsel who shall be reasonably acceptable to the Trustee.

“**Original Issue Discount Security**” means any Security which is initially sold at a discount from the principal amount thereof and the terms of which provide that upon redemption or acceleration of the Maturity thereof, an amount less than the principal amount thereof would become due and payable.

“**Outstanding**”, when used with respect to any particular Securities or to the Securities of any particular series means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

(i) such Securities theretofore canceled by the Trustee or delivered by the Company to the Trustee for cancellation;

(ii) such Securities, or portions thereof, for whose payment or redemption money in the necessary amount has been theretofore deposited in trust with the Trustee or with any Paying Agent (as hereinafter defined) other than the Company, or, if the Company shall act as its own Paying Agent, has been set aside and segregated in trust by the Company; *provided*, in any case, that if such Securities are to be redeemed prior to their Scheduled Maturity Date, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) such Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, or which shall have been paid, in each case, pursuant to the terms of Section 3.06 (except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a Person in whose hands such Security is a legal, valid, and binding obligation of the Company).

In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of any Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof. In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given a direction concerning the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or concerning the exercise of any trust or power conferred upon the Trustee under this Indenture, or concerning a consent on behalf of the Holders of any series of Securities to the waiver of any past default and its consequences, Securities owned by the Company, 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. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Securities which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act as owner with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

**"Paying Agent"** means, with respect to any Securities, any Person appointed by the Company to distribute amounts payable by the Company on such Securities. If at any time there shall be more than one such Person, "Paying Agent" as used with respect to the Securities of any particular series shall mean the Paying Agent with respect to Securities of that series. As of the date of this Indenture, the Company has appointed Union Bank, N.A. as Paying Agent with respect to all Securities issuable hereunder.

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

**"Place of Payment"** means with respect to any series of Securities issued hereunder the city or political subdivision so designated with respect to the series of Securities in question in accordance with the provisions of Section 3.01.

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

“**Principal Property**” means any single manufacturing or processing plant, office building or warehouse owned or leased by the Company or a Restricted Subsidiary which has a gross book value in excess of 2% of Consolidated Net Tangible Assets other than a plant, warehouse, office building, or portion thereof which, in the opinion of the Company’s Board of Directors, is not of material importance to the business conducted by the Company and its Restricted Subsidiaries as an entirety.

“**Record Date**” means any date as of which the Holder of a Security will be determined for any purpose described herein, such determination to be made as of the close of business on such date by reference to the Security Register.

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

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

“**Repayment Date**”, when used with respect to any Security to be repaid, means the date fixed for such repayment pursuant to such Security.

“**Repayment Price**”, when used with respect to any Security to be repaid, means the price at which it is to be repaid pursuant to such Security.

“**Required Currency**” has the meaning specified in Section 1.14.

“**Responsible Officer**”, when used with respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office, having direct responsibility for the administration of this Indenture, and also, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“**Restricted Subsidiary**” means at any time any Subsidiary of the Company except a Subsidiary which is at the time an Unrestricted Subsidiary.

“**Scheduled Maturity Date**”, when used with respect to any Security, means the date specified in such Security as the date on which all outstanding principal and interest will be due and payable.

“**Security**” or “**Securities**” means any note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, of any series authenticated and delivered from time to time under this Indenture.

“**Security Register**” has the meaning specified in Section 3.05.

“**Security Registrar**” means the Person who maintains the Security Register, which Person shall be the Trustee unless and until a successor Security Registrar is appointed by the Company.

“**Senior Indebtedness**” means all obligations or indebtedness of, or guaranteed or assumed by, the Company, whether or not represented by bonds, debentures notes or similar instruments, for borrowed money, and any amendments, renewals, extensions, modifications and refundings of any such obligations or indebtedness, unless in the instrument creating or evidencing any such indebtedness or obligations or pursuant to which the same is outstanding it is specifically stated, at or prior to the time the Company becomes liable in respect thereof, that any such obligation or indebtedness or such amendment, renewal, extension, modification and refunding thereof is not Senior Indebtedness.

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

“**Specified Currency**” has the meaning specified in Section 3.01.

“**Subordinated Security**” means any security issued under this Indenture which is designated as a Subordinated Security.

“**Subsidiary**” of any specified corporation means any entity at least a majority of whose outstanding Voting Stock shall at the time be owned, directly or indirectly, by the specified corporation or by one or more of its Subsidiaries, or both.

“**Trust Indenture Act**” or “**TIA**” means the Trust Indenture Act of 1939, as amended, as in force as of the date hereof, except as provided in Section 9.05.

“**Trustee**” means the party named as such above until a successor becomes such pursuant to this Indenture and thereafter means or includes each party who is then a trustee hereunder, and if at any time there is more than one such party, “Trustee” as used with respect to the Securities of any series means the Trustee with respect to Securities of that series. If Trustees with respect to different series of Securities are trustees under this Indenture, nothing herein shall constitute the Trustees co-trustees of the same trust, and each Trustee shall be the trustee of a trust separate and apart from any trust administered by any other Trustee with respect to a different series of Securities.

“**Unrestricted Subsidiary**” means any Subsidiary of the Company (not at the time designated a Restricted Subsidiary) (i) the major part of whose business consists of finance, banking, credit, leasing, insurance, financial services, or other similar operations, or any combination thereof, (ii) substantially all the assets of which consist of the capital stock of one or more such Subsidiaries, or (iii) designated as such by the Company’s Board of Directors; *provided* that such designation will not constitute a violation of the terms of the Securities. Any Subsidiary designated as a Restricted Subsidiary may be designated as an

Unrestricted Subsidiary unless such designation will constitute a violation of the terms of the Securities.

“**U.S. Government Obligations**” means (i) securities that are direct obligations of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America and (ii) securities that are obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America, and also includes depository receipts issued by a bank or trust company as custodian with respect to any of the securities described in the preceding clauses (i) and (ii), and any payment of interest or principal payable under any of the securities described in the preceding clauses (i) and (ii) that is 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, or from any amount received by the custodian in respect of such securities, or from any specific payment of interest or principal payable under the securities evidenced by such depository receipt.

“**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**”, as applied to the stock of any corporation, means stock of any class or classes (however designated), the outstanding shares of which have, by the terms thereof, ordinary voting power to elect a majority of the members of the board of directors (or other governing body) of such corporation, other than stock having such power only by reason of the happening of a contingency.

Section 1.02. *Officers’ Certificates and Opinions.* Every Officers’ Certificate, Opinion of Counsel, and other certificate or opinion to be delivered to the Trustee under this Indenture with respect to any action to be taken by the Trustee (except for the Officers’ Certificate required by Section 10.04) shall include the following:

- (a) a statement that each individual signing such certificate or opinion has read all covenants and conditions of this Indenture relating to such proposed action, including the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to

express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the 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, legal counsel, unless such officer knows that any such certificate, opinion, or representation is erroneous. Any opinion of counsel for the Company 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, unless such counsel knows that any such certificate, opinion, or representation is 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, such instruments may, but need not, be consolidated and form a single instrument.

Section 1.04. *Acts of Securityholders.* (a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and (if expressly required by the applicable terms of this Indenture) to the Company. If any Securities are denominated in coin or currency other than that of the United States, then for the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by a certificate provided by a financial institution, selected by the Company, that maintains an active trade in the currency in question, acting as conversion agent) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the

Trustee as provided in the immediately preceding sentence. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall for all purposes be determined by reference to the Security Register, as such register shall exist as of the applicable date.

(d) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, by Board Resolution, fix in advance a Record Date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such Record Date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after such Record Date, but only the Holders of record at the close of business on such Record Date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Securities Outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Securities Outstanding shall be computed as of such Record Date; *provided* that no such authorization, agreement or consent by the Holders on such Record Date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after such Record Date.

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

Section 1.05. *Notices, etc., to Trustee and Company.* Any request, order, authorization, direction, consent, waiver, or other action to be taken by the Trustee, the Company, or the Securityholders hereunder (including any Authentication Order), and any notice to be given to the Trustee or the Company with respect to any action taken or to be taken by the Trustee, the Company, or the Securityholders hereunder, shall be sufficient if made in writing and:

(a) (if to be furnished or delivered to or filed with the Trustee by the Company or any Securityholder) delivered to the Trustee at its Corporate Trust Office, Attention: Corporate Finance, or

(b) (if to be furnished or delivered to the Company by the Trustee or any Securityholder, and except as otherwise provided in Section 5.01(d) and, in the case of a request for repayment, except as specified in the Security carrying the right to repayment) mailed to the Company, first-class postage prepaid, at its principal office (as specified in the first paragraph of this instrument), Attention: Treasurer, or at any other address hereafter furnished in writing by the Company to the Trustee.

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

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it shall be impractical to mail notice of any event to any Securityholder when such notice is required to be given pursuant to any provision of this Indenture or the applicable Security, then any method of notification as shall be satisfactory to the Trustee and the Company shall be deemed to be sufficient for the giving of such notice.

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



Section 1.08. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents hereof are for convenience only and shall not affect the construction of any provision of this Indenture.

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

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

Section 1.11. *Benefits of Indenture.* Nothing in this Indenture or in any Securities, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder, the Authenticating Agent, the Security Registrar, any Paying Agent, and the Holders of Securities (or such of them as may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of New York.

Section 1.13. *Counterparts.* This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all of which shall together constitute but one and the same instrument.

Section 1.14. *Judgment Currency.* The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court with respect to the Securities of any series it is necessary to convert the sum due in respect of the principal, premium, if any, or interest, if any, payable with respect to such Securities into a currency in which a judgment can be rendered (the "**Judgment Currency**"), the rate of exchange from the currency in which payments under such Securities is payable (the "**Required Currency**") into the Judgment Currency shall be the highest bid quotation (assuming European-style quotation—*i.e.*, Required Currency per Judgment Currency) received by the Company from three recognized foreign exchange dealers in the City of New York for the purchase of the aggregate amount of the judgment (as denominated in the Judgment Currency) on the Business Day preceding the date on which a final unappealable judgment is rendered, for settlement on such payment date, and at which the applicable dealer timely commits to execute a contract, and (b) the Company's obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or by any recovery pursuant to any judgment (whether or not entered in accordance with the preceding clause (a)), in any currency other than the Required Currency, except to the extent that such

tender or recovery shall result in the actual receipt by the judgment creditor of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

Section 1.15. *Legal Holidays.*

In any case where any Interest Payment Date, Redemption Date, Repayment Date or Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or at Maturity; *provided*, that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Repayment Date or at Maturity, as the case may be.

ARTICLE 2  
SECURITY FORMS

Section 2.01. *Forms Generally.* The Securities of each series shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

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

Section 2.02. *Forms of Securities.* Each Security shall be in one of the forms approved from time to time by or pursuant to any Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery to the Trustee for authentication of any Security in any form approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee a copy of such Board Resolution, together with a true and correct copy of the form of Security which has been approved thereby, or, if a Board Resolution authorizes a

specific officer or officers to approve a form of Security, together with a certificate of such officer or officers approving the form of Security attached thereto; *provided, however*, that with respect to all Securities issued pursuant to the same Board Resolution, the required copy of such Board Resolution, together with the appropriate attachment, need be delivered only once. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or by a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

Section 2.03. *Securities in Global Form.* If Securities of a series are issuable in whole or in part in global form, the global security representing such Securities may provide that it shall represent the aggregate amount of Outstanding Securities 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 reduced to reflect exchanges or increased to reflect the issuance of additional Securities. Any endorsement of a Security in global form to reflect the amount (or any increase or decrease in the amount) 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 Authentication Order delivered to the Trustee pursuant to Section 3.03 hereof.

Section 2.04. *Form of Trustee's Certificate of Authentication.* The form of Trustee's Certificate of Authentication for any Security issued pursuant to this Indenture shall be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

UNION BANK, N.A., as Trustee,

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

ARTICLE 3  
THE SECURITIES

Section 3.01. *General Title; General Limitations; Issuable in Series; Terms of Particular Series.* The aggregate principal amount of Securities that may be authenticated, delivered, and Outstanding at any time under this Indenture is not limited.

The Securities may be issued in one or more series in such aggregate principal amount as may from time to time be authorized by the Board of Directors. All Securities of a series issued under this Indenture shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the authentication and delivery or Scheduled Maturity Date thereof.

Each series of Securities shall be created either by or pursuant to one or more Board Resolutions or by one or more indentures supplemental hereto. Any such Board Resolution or supplemental indenture (or, in the case of a series of Securities created pursuant to a Board Resolution, any officer or officers authorized by such Board Resolution) shall establish the terms of any such series of Securities, including the following (as and to such extent as may be applicable):

- (1) the title of such series;
- (2) the limit, if any, upon the aggregate principal amount or issue price of the Securities of such series;
- (3) the issue date or issue dates of the Securities of such series;
- (4) the Scheduled Maturity Date of the Securities of such series;
- (5) the place or places where the principal, premium, if any, interest, if any, and additional amounts, if any, payable with respect to the Securities of such series shall be payable;
- (6) whether the Securities of such series will be issued at par or at a premium over or a discount from their face amount;
- (7) the rate or rates (which may be fixed or variable) at which the Securities of such series shall bear interest, if any, and, if applicable, the method by which such rate or rates may be determined;
- (8) the date or dates (or the method by which such date or dates may be determined) from which interest, if any, shall accrue, and the Interest Payment Dates on which such interest shall be payable;
- (9) the rights, if any, to defer payments of interest on the Securities by extending the interest payment periods and the duration of such extension;
- (10) the period or periods within which, the Redemption Price(s) or Repayment Price(s) at which, and any other terms and conditions upon which the Securities of such series may be redeemed or repaid, in whole or in part, by the Company;

(11) the obligation, if any, of the Company to redeem, repay, or purchase any of the Securities of such series pursuant to any sinking fund, mandatory redemption, purchase obligation, or analogous provision at the option of a Holder thereof, and the period or periods within which, the Redemption Price(s) or Repayment Price(s) or other price or prices at which, and any other terms and conditions upon which the Securities of such series shall be redeemed, repaid, or purchased, in whole or in part, pursuant to such obligation;

(12) whether the Securities of such series are to be issued in whole or in part in global form and, if so, the identity of the Depositary for such global security and the terms and conditions, if any, upon which interests in the Securities represented by such global security may be exchanged, in whole or in part, for the individual Securities represented thereby (if other than as provided in Section 3.05);

(13) whether such Securities are Subordinated Securities and if so, the provisions for such subordination if other than the provisions set forth in Article 13;

(14) the denominations in which the Securities of such series will be issued (which may be any denomination as set forth in the terms of such Securities) if other than U.S.\$1,000 or an integral multiple thereof;

(15) whether and under what circumstances additional amounts on the Securities of such series shall be payable in respect of any taxes, assessments, or other governmental charges withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts;

(16) the basis upon which interest shall be calculated;

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

(18) the exchange or conversion of the Securities of that series, whether or not at the option of the Holders thereof, for or into new Securities of a different series or for or into any other securities which may include shares of capital stock of the Company or any Subsidiary of the Company or securities directly or indirectly convertible into or exchangeable for any such shares or securities of entities unaffiliated with the Company or any Subsidiary of the Company;

(19) if other than U.S. dollars, the foreign or composite currency or currencies (each such currency a "**Specified Currency**") in which the Securities of such series shall be denominated and in which payments of principal, premium,

if any, interest, if any, or additional amounts, if any, payable with respect to such Securities shall or may be payable;

(20) if the principal, premium, if any, interest, if any, or additional amounts, if any, payable with respect to the Securities of such series are to be payable in any currency other than that in which the Securities are stated to be payable, whether at the election of the Company or of a Holder thereof, the period or periods within which, and the terms and conditions upon which, such election may be made;

(21) if the amount of any payment of principal, premium, if any, interest, if any, or other sum payable with respect to the Securities of such series may be determined by reference to the relative value of one or more Specified Currencies, commodities, securities, or instruments, the level of one or more financial or non-financial indices, or any other designated factors or formulas, the manner in which such amounts shall be determined;

(22) the exchange of Securities of such series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal amount of a different authorized kind or different authorized denomination or denominations, or both;

(23) the appointment by the Trustee of an Authenticating Agent in one or more places other than the Corporate Trust Office of the Trustee, with power to act on behalf of the Trustee, and subject to its direction, in the authentication and delivery of the Securities of such series;

(24) any trustees, depositories, paying agents, transfer agents, exchange agents, conversion agents, registrars, or other agents with respect to the Securities of such series if other than the Trustee, Paying Agent and Security Registrar named herein;

(25) the portion of the principal amount of Securities of such series, if other than the principal amount thereof, that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or provable in bankruptcy pursuant to Section 5.04;

(26) any Event of Default with respect to the Securities of such series, if not set forth herein, or any modification of any Event of Default set forth herein with respect to such series;

(27) any covenant solely for the benefit of the Securities of such series;

(28) the inapplicability of Sections 4.02 and 4.03 of this Indenture to the Securities of such series and if Section 4.03 is applicable, the covenants subject to Covenant Defeasance under Section 4.03; and

(29) any other terms not inconsistent with the provisions of this Indenture.

If all of the Securities issuable by or pursuant to any Board Resolution are not to be issued at one time, it shall not be necessary to deliver the Officers' Certificate and Opinion of Counsel required by Section 3.03 hereof at the time of issuance of each such Security, but such Officers' Certificate and Opinion of Counsel shall be delivered at or before the time of issuance of the first such Security.

If any series of Securities shall be established by action taken pursuant to any Board Resolution, the execution by the officer or officers authorized by such Board Resolution of an Authentication Order with respect to the first Security of such series to be issued, and the delivery of such Authentication Order to the Trustee at or before the time of issuance of the first Security of such series, shall constitute a sufficient record of such action. Except as otherwise permitted by Section 3.03, if all of the Securities of any such series are not to be issued at one time, the Company shall deliver an Authentication Order with respect to each subsequent issuance of Securities of such series, but such Authentication Orders may be executed by any authorized officer or officers of the Company, whether or not such officer or officers would have been authorized to establish such series pursuant to the aforementioned Board Resolution.

Unless otherwise provided by or pursuant to the Board Resolution or supplemental indenture creating such series (i) a series may be reopened for issuances of additional Securities of such series, and (ii) all Securities of the same series shall be substantially identical, except for the initial Interest Payment Date, issue price, initial interest accrual date and the amount of the first interest payment.

The form of the Securities of each series shall be established in a supplemental indenture or by or pursuant to the Board Resolution creating such series. The Securities of each series shall be distinguished from the Securities of each other series in such manner as the Board of Directors or its authorized representative or representatives may determine.

Unless otherwise provided with respect to Securities of a particular series, the Securities of any series may only be issuable in registered form, without coupons.

Section 3.02. *Denominations and Currency.* The Securities of each series shall be issuable in such denominations and currency as shall be provided in the provisions of this Indenture or by or pursuant to the Board Resolution or supplemental indenture creating such series. In the absence of any such provisions with respect to the Securities of any series, the Securities of that series shall be issuable only in fully registered form in denominations of U.S. \$1,000 and any integral multiple thereof.

Section 3.03. *Execution, Authentication and Delivery, and Dating.* The Securities shall be executed on behalf of the Company by any two of the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Senior Vice President and any Vice President of the Company and attested by its Secretary or any one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

Unless otherwise provided in the form of Security for any series, all Securities shall be dated the date of their authentication.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities to the Trustee for authentication, together with a Company Order for authentication and delivery (such Order an "**Authentication Order**") with respect to such Securities, and the Trustee shall, upon receipt of such Authentication Order, in accordance with procedures acceptable to the Trustee set forth in the Authentication Order, and subject to the provisions hereof, authenticate and deliver such Securities to such recipients as may be specified from time to time pursuant to such Authentication Order. The material terms of such Securities shall be determinable by reference to such Authentication Order and procedures. If provided for in such procedures, such Authentication Order may authorize authentication and delivery of such Securities pursuant to oral instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to the provisions of Section 6.01 hereof) shall be fully protected in relying upon:

- (1) an executed supplemental indenture, if any;
- (2) an Officers' Certificate, certifying as to the authorized form or forms and terms of such Securities; and
- (3) an Opinion of Counsel, stating that:

(a) the form or forms and terms of such Securities have been established by and in conformity with the provisions of this Indenture; *provided*, that if all such Securities are not to be issued at the same time, such Opinion of Counsel may state that such terms will be established in



conformity with the provisions of this Indenture, subject to any conditions specified in such Opinion of Counsel; and

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

*provided, however*, that if all Securities issuable by or pursuant to a Board Resolution or supplemental indenture are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate or Opinion of Counsel otherwise required pursuant to this paragraph at or prior to the time of authentication of each such Security if such documents are delivered at or prior to the time of authentication upon original issuance of the first such Security to be issued. After the original issuance of the first such Security to be issued, any separate request by the Company that the Trustee authenticate such Securities for original issuance will be deemed to be a certification by the Company that it is in compliance with all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities.

The Trustee shall not be required to authenticate such Securities if the issue thereof will adversely affect the Trustee's own rights, duties, or immunities under the Securities and this Indenture.

If the Company shall establish pursuant to Section 3.01 that Securities of a series may be issued in whole or in part in global form, then the Company shall execute, and the Trustee shall (in accordance with this Section 3.03 and the Authentication Order with respect to such series) authenticate and deliver, one or more Securities in global form that (i) shall represent and shall be denominated in an aggregate amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such one or more Securities in global form, (ii) shall be registered, in the name of the Depository for such Security or Securities in global form, or in the name of a nominee of such Depository, (iii) shall be delivered to such Depository or pursuant to such Depository's instruction, and (iv) shall bear a legend substantially as follows: "Unless and until it is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by the Depository to a nominee of the Depository, or by a nominee of the Depository to the Depository or another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository." Each Depository designated pursuant to Section 3.01 for a Security in global form must, at the time of its designation and at all times while it serves as Depository, be a

clearing agency registered under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and any other applicable statute or regulation.

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

Section 3.04. *Temporary Securities.* Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Sections 2.02, 3.01 and 3.03 hereof, together with an Authentication Order, the Trustee shall authenticate and deliver, temporary Securities of such series that 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, without coupons, and with such appropriate insertions, omissions, substitutions, and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. In the case of Securities of any series for which a temporary Security may be issued in global form, such temporary global security shall represent all of the Outstanding Securities of such series and tenor.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions thereof, if temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable, at the Corporate Trust Office of the Trustee, or at such other office or agency as may be maintained by the Company in a Place of Payment pursuant to Section 10.02 hereof, for definitive Securities of such series having identical terms and provisions, upon surrender of the temporary Securities of such series, at the Company's own expense and without charge to the Holder; and upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series in authorized denominations containing identical terms and provisions. Unless otherwise specified as contemplated by Section 3.01 with respect to a temporary Security in global form, until so exchanged, the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.05. *Registration, Transfer and Exchange.* With respect to the Securities of each series, the Trustee shall keep a register (herein sometimes referred to as the "**Security Register**") which shall provide for the registration of Securities of such series, and for registration of transfers of Securities of such

series, in accordance with information to be provided to the Trustee by the Company, subject to such reasonable regulations as the Trustee may prescribe. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection, during normal business hours, at the Corporate Trust Office of the Trustee or at such other office or agency to be maintained by the Company pursuant to Section 10.02 hereof.

Upon due presentation for registration of transfer of any Security of any series at the Corporate Trust Office of the Trustee or at any other office or agency maintained by the Company with respect to that series pursuant to Section 10.02 hereof, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of such series of any authorized denominations, of like aggregate principal amount, tenor, terms and Scheduled Maturity Date.

Any other provision of this Section 3.05 notwithstanding, unless and until it is exchanged in whole or in part for the individual Securities represented thereby, in definitive form, a Security in global form representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository, or by a nominee of such Depository to such Depository or another nominee of such Depository, or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

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

If at any time the Depository for the Securities of a series represented by one or more Securities in global form notifies the Company that it is unwilling or unable to continue as Depository for the Securities of such series, or if at any time the Depository for the Securities of such series shall no longer be eligible under Section 3.03 hereof, the Company, by Company Order, shall appoint a successor Depository with respect to the Securities of such series. If a successor Depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 3.01 that such Securities be represented by one or more Securities in global form shall no longer be effective with respect to the Securities of such series and the Company will execute, and the Trustee, upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver

Securities of such series in definitive form, in authorized denominations, in an aggregate principal amount, and of like terms and tenor, equal to the principal amount of the Security or Securities in global form representing such series, in exchange for such Security or Securities in global form.

The Company may at any time and in its sole discretion and subject to the procedures of the Depositary determine that individual Securities of any series issued in global form shall no longer be represented by such Security or Securities in global form. In such event the Company will execute, and the Trustee, upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series and of the same terms and tenor, will authenticate and deliver Securities of such series in definitive form, in authorized denominations, and in aggregate principal amount equal to the principal amount of the Security or Securities in global form representing such series in exchange for such Security or Securities in global form.

If specified by the Company pursuant to Section 3.01 with respect to a series of Securities issued in global form, the Depositary for such series of Securities may surrender a Security in global form for such series of Securities in exchange in whole or in part for Securities of such series in definitive form and of like terms and tenor on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series, shall authenticate and deliver, without service charge:

(a) to each Person specified by such Depositary, a new definitive Security or Securities of the same series and of the same tenor and terms, in authorized denominations, in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Security in global form; and

(b) to such Depositary, a new Security in global form in a denomination equal to the difference, if any, between the principal amount of the surrendered Security in global form and the aggregate principal amount of the definitive Securities delivered to Holders pursuant to clause (a) above.

Upon the exchange of a Security in global form for Securities in definitive form, such Security in global form shall be canceled by the Trustee or an agent of the Company or the Trustee. Securities issued in definitive form in exchange for a Security in global form pursuant to this Section 3.05 shall be registered in such names and in such authorized denominations as the Depositary for such Security in global form, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Company or the Trustee in writing. The Trustee or such agent shall deliver such Securities to or as directed by the Persons in whose names such Securities are so registered or to the Depositary.

Whenever any securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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 entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be imposed for any registration of transfer or exchange of Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Sections 3.04, 3.06, 9.06 and 11.07 hereof not involving any transfer.

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

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

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

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

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

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

Section 3.07. *Payment of Interest; Interest Rights Preserved.* Interest on any Security which is payable and is punctually paid or duly provided for on any Interest Payment Date shall, if so provided in such Security, be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the applicable Record Date, notwithstanding any transfer or exchange of such Security subsequent to such Record Date and prior to such Interest Payment Date (unless such Interest Payment Date is also the date of Maturity of such Security).

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the registered Holder on the applicable Record Date by virtue of his having been such Holder; and, except as hereinafter provided, such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or clause (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names any such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such 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 prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed

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

(b) 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 Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Interest on Securities of any series that bear interest may be paid by mailing a check to the address of the Person entitled thereto at such address as shall appear in the Securities Register for such series or by such other means as may be specified in the form of such Security.

Subject to the foregoing provisions of this Section 3.07 and the provisions of Section 3.05 hereof, 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 3.08. *Persons Deemed Owners.* Prior to due presentment of a 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 any Security is registered on the applicable Record Date(s) as the owner of such Security for the purpose of receiving payment of principal, premium, if any, interest, if any (subject to Sections 3.05 and 3.07 hereof), and any additional amounts payable with respect to such Security, and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee, nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

None of the Company, the Trustee, any Authenticating Agent, any Paying Agent, the Security Registrar, or any co-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 Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests and each of them may act or refrain from acting without liability on any information relating to such records provided by the Depository.

Section 3.09. *Cancellation.* All Securities surrendered for payment, redemption, registration of transfer, exchange, or credit against a sinking or analogous fund shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already canceled, shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. Acquisition of such Securities by the Company shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation. No Security shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.09, except as expressly permitted by this Indenture. The Trustee shall dispose of all canceled Securities in accordance with its customary procedures and deliver a certificate of such disposition to the Company.

Section 3.10. *Computation of Interest.* Unless otherwise provided as contemplated in Section 3.01, interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

Section 3.11. *CUSIP Numbers.* The Company in issuing the Securities may use “CUSIP” and “ISIN” numbers (if then generally in use), and, if so, the Trustee shall use the CUSIP or ISIN numbers, as the case may be, in notices of redemption as a convenience to Holders; *provided*, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, as the case may be, either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities. The Company will promptly notify the Trustee in writing of any change in the CUSIP or ISIN number.

ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. *Satisfaction and Discharge of Indenture.* This Indenture shall cease to be of further effect with respect to any series of Securities (except as to any surviving rights of conversion or transfer or exchange of Securities of such series expressly provided for herein or in the form of Security for such series), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when

(a) either

(i) all Securities of that series theretofore authenticated and delivered (other than (A) Securities of such series which have been



destroyed, lost, or stolen and which have been replaced or paid as provided in Section 3.06, and (B) Securities of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.07) have been delivered to the Trustee canceled or for cancellation; or

(ii) all such Securities of that series not theretofore delivered to the Trustee canceled or for cancellation

(A) have become due and payable, or

(B) will, in accordance with their Scheduled Maturity Date, become due and payable within one year, or

(C) 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, in any of the cases described in subparagraphs (A), (B), or (C) above, the Company has irrevocably deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, (x) an amount in money sufficient, (y) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money sufficient, or (z) a combination of (x) and (y) sufficient, in the opinion with respect to (y) and (z) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities with respect to principal, premium, if any, and interest, if any, to the date of such deposit (in the case of Securities which have become due and payable), or to the Scheduled Maturity Date or Redemption Date, as the case may be; *provided, however*, that if such U.S. Government Obligations or Equivalent Government Securities are callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if such issuer elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date, as the case may be. The Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision; and

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Securities of such series; and

(c) 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 with respect to the Securities of such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company under paragraph (a) of this Section 4.01 and its obligations to the Trustee with respect to that series under Section 6.07 shall survive, and the obligations of the Trustee under Sections 4.05, 4.07 and 10.03 shall survive.

*Section 4.02. Discharge and Defeasance*

The provisions of this Section 4.02 and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In addition to discharge of this Indenture pursuant to Section 4.01, in the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series as provided in this Section 4.02 on and after the date the conditions set forth in Section 4.04 are satisfied, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive, solely from the trust fund described in subparagraph (a) of Section 4.04, payments of principal thereof, premium, if any, and interest, if any, thereon upon the original stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) this Section 4.02 and Sections 4.07, 10.02 and 10.03 and (vi) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them) (hereinafter called "**Defeasance**"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same.

*Section 4.03. Covenant Defeasance.*

The provisions of this Section 4.03 and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), (i) the Company shall be released from its obligations under any covenants specified in or pursuant to Section 3.01 as being subject to Covenant

Defeasance with respect to such series (except as to (a) rights of registration of transfer and exchange of Securities of such series and rights under Sections 4.07, 10.02 and 10.03, (b) substitution of mutilated, destroyed, lost or stolen Securities of such series, (c) rights of Holders of Securities of such series to receive, from the Company pursuant to Section 10.01, payments of principal thereof and interest, if any, thereon upon the original stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (d) the rights, obligations, duties and immunities of the Trustee hereunder and (e) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and (ii) the occurrence of any event specified in Section 5.01(d) (with respect to any of the covenants specified in or pursuant to Section 3.01 as being subject to Covenant Defeasance with respect to such series) shall be deemed not to be or result in a default or an Event of Default, in each case with respect to the Outstanding Securities of such series as provided in this Section 4.03 on and after the date the conditions set forth in Section 4.04 are satisfied (hereinafter called "**Covenant Defeasance**"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same. For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant (to the extent so specified in the case of Section 5.01(d)), whether directly or indirectly by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series shall be unaffected thereby.

*Section 4.04. Conditions to Defeasance or Covenant Defeasance.*

The following shall be the conditions to application of either Sections 4.02 or 4.03 to the Outstanding Securities:

(a) with reference to Sections 4.02 or 4.03, the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion (with respect to (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal (including mandatory sinking fund payments) of, premium, if any, and interest on, the Outstanding Securities of such series on the dates such installments of interest, premium or principal are due, including upon redemption; *provided, however*, that if such U.S. Government Obligations and Equivalent Government Securities are

callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and/or Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if the issuer of any such U.S. Government Obligations or Equivalent Government Securities elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date of such Securities, as the case may be. The Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision.

(b) in the case of Defeasance under Section 4.02, the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y) since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, Defeasance and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, Defeasance and discharge had not occurred;

(c) in the case of Covenant Defeasance under Section 4.03, the Company has delivered to the Trustee an Opinion of Counsel to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and Covenant Defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and Covenant Defeasance had not occurred;

(d) no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit, after giving effect to such deposit or, in the case of a Defeasance under Section 4.02, no Event of Default specified in Sections 5.01(e) or 5.01(f) shall have occurred, at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(e) such Defeasance or Covenant Defeasance will not cause the Trustee to have a conflicting interest within the meaning of the TIA, assuming all Securities of a series were in default within the meaning of the TIA;

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

(g) such Defeasance or Covenant Defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), unless the trust is registered under the Investment Company Act or exempt from registration;

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

(i) the Company shall have delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to such Defeasance or Covenant Defeasance, as the case may be, have been complied with.

Section 4.05. *Application of Trust Money; Excess Funds.* All money and U.S. Government Obligations or Equivalent Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Sections 4.01 or 4.04 hereof shall be held in trust and applied by it, in accordance with the provisions of this Indenture and of the series of Securities in respect of which it was deposited, 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, if any, and interest, if any, for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Obligations or Equivalent Government Securities deposited pursuant to Sections 4.01 or 4.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Securities.

Anything in this Article 4 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Governmental Obligations or Equivalent Government Securities held by it as provided in Sections 4.01 or 4.04 which, in the opinion of a nationally recognized investment bank, appraisal firm or firm of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, (which may be the opinion delivered under Sections 4.01 or 4.04, as applicable), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent satisfaction and discharge, Covenant Defeasance or Defeasance of the applicable series.

Section 4.06. *Paying Agent to Repay Moneys Held.* Upon the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent of the Securities (other than the Trustee) shall, upon demand of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

Section 4.07. *Return of Unclaimed Amounts.* Any amounts deposited with or paid to the Trustee or any Paying Agent or then held by the Company, in trust for payment of the principal of, premium, if any, or interest, if any, on the Securities and not applied but remaining unclaimed by the Holders of such Securities for two years after the date upon which the principal of, premium, if any, or interest, if any, on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on Company Request or (if then held by the Company) shall be discharged from such trust; and the Holder of any of such Securities shall thereafter look only to the Company for any payment which such Holder may be entitled to collect (until such time as such unclaimed amounts shall escheat, if at all, to the State of New York) 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. Notwithstanding the foregoing, the Trustee or Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once a week for two successive weeks (in each case on any day of the week) in a newspaper printed in the English language and customarily published at least once a day at least five days in each calendar week and of general circulation in the Borough of Manhattan, in the City and State of New York, a notice that said amounts have not been so applied and that after a date named therein any unclaimed balance of said amounts then remaining will be promptly returned to the Company.

Section 4.08. *Reinstatement.* If the Trustee is unable to apply any money in accordance with Section 4.04(a) by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.04(a) until such time as the Trustee is permitted to apply all such money in accordance with Section 4.04(a); *provided, however,* that if the Company makes any payment of principal of (and premium, if any) or interest on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of the Securities of such series to receive such payment from the money held by the Trustee

ARTICLE 5  
REMEDIES

Section 5.01. *Events of Default.* "**Event of Default**", wherever used herein, means with respect to any series of Securities any one of the following

events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to a particular series or it is specifically deleted or modified in the manner contemplated by Section 3.01:

- (a) default in the payment of any interest on any Security of such series when it becomes due and payable, and continuance of such default for a period of 30 days; or
- (b) default in the payment of the principal amount of (or premium, if any, on) any Security of such series as and when the same shall become due, either at Maturity, upon redemption, by declaration, or otherwise; or
- (c) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series and continuance of such default for a period of 30 days; or
- (d) default in the performance or breach of any covenant or warranty of the Company in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is elsewhere in this Section 5.01 specifically dealt with), and continuance of such default or breach for a period of 90 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 the 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
- (e) the entry of an order for relief against the Company under the Federal Bankruptcy Act by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent under any other applicable Federal or State law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or
- (f) the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee,

sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

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

A default under any indebtedness of the Company other than the Securities will not constitute an Event of Default under this Indenture, and a default under one series of Securities will not constitute a default under any other series of Securities.

*Section 5.02. Acceleration of Maturity; Rescission, and Annulment.* If any Event of Default described in Section 5.01 above (other than Event of Default described in Sections 5.01(e) and 5.01(f)) shall have occurred and be continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% (or such other percentage provided for in accordance with Section 3.01) in aggregate principal amount of the Securities of such series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series and any and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, any provision of this Indenture or the Securities of such series to the contrary notwithstanding. If an Event of Default specified in Sections 5.01(e) or 5.01(f) occurs, the principal amount of the Securities of such series and any and all accrued interest thereon shall immediately become and be due and payable without any declaration or other act on the part of the Trustee or any Holder. No declaration of acceleration by the Trustee with respect to any series of Securities shall constitute a declaration of acceleration by the Trustee with respect to any other series of Securities, and no declaration of acceleration by the Holders of at least 25% (or such other percentage provided for in accordance with Section 3.01) in aggregate principal amount of the Outstanding Securities of any series shall constitute a declaration of acceleration or other action by any of the Holders of any other series of Securities, in each case whether or not the Event of Default on which such declaration is based shall have occurred and be continuing with respect to more than one series of Securities, and whether or not any Holders of the Securities of any such affected series shall also be Holders of Securities of any other such affected series.

At any time after such a declaration of acceleration has been made with respect to the Securities of any series and before a judgment or decree for



payment of the money due has been obtained by the Trustee as hereinafter provided in this Article 5, the Holders of not less than a majority (or such other percentage provided for in accordance with Section 3.01) in aggregate 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 all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 5.13, if such cure or waiver does not conflict with any judgment or decree set forth in Sections 5.01(e) and 5.01(f) and if all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid.

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

Section 5.03. *Collection of Indebtedness and Suits for Enforcement by Trustee.* The Company covenants that if:

- (a) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable, or
- (b) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof, or
- (c) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of any series, and
- (d) any such default continues for any period of grace provided in relation to such default pursuant to Section 5.01,

then, with respect to the Securities of such series, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of clause (c) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of clause (c) above) for principal (and premium, if any) and interest, if any, with interest (to the extent that payment of such interest shall be legally enforceable) upon the overdue principal (and premium, if any) and upon overdue installments of interest, if any, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of clause (c) above); and, in addition thereto, such further amount 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 and all other amounts due the Trustee under Section 6.07.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a

judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities of such series and collect the money adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

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

Section 5.04. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceedings or otherwise,

(a) to file and prove a claim for the whole amount of principal (or, with respect to Original Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities), premium, if any, and interest, if any, owing and unpaid in respect of the Securities, and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel, and all other amounts due the Trustee under Section 6.07) and of the Securityholders allowed in such judicial proceedings, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator, sequesteror (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder 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 Securityholders, 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 6.07 hereof.

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

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

Section 5.06. *Application of Money Collected.* Any money collected by the Trustee with respect to a series of Securities pursuant to this Article 5 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, premium, if any, or interest, if any, upon presentation of the Securities of such series 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 under Section 6.07 hereof.

Second: To the payment of the amounts then due and unpaid upon the Securities of that series for principal, premium, if any, interest, if any, and additional amounts, if any, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind.

Section 5.07. *Limitation on Suits.* No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

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

(b) the Holders of not less than 25% (or such other percentage provided for in accordance with Section 3.01) 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;

(c) 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;

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

(e) 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 Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Securities of such series.

Section 5.08. *Unconditional Right of Securityholders to Receive Principal, Premium, and Interest.* Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal, premium, if any, and (subject to Section 3.07) interest, if any, (and additional amounts, if any) on such Security on or after the respective payment dates expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment on or after such respective date, and such right shall not be impaired or affected without the consent of such Holder.

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, the Trustee and Securityholders 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 the Securityholders shall continue as though no such proceeding had been instituted.

Section 5.10. *Rights and Remedies Cumulative.* No right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right or remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Security 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 5 or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 5.12. *Control by Securityholders.* 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, *provided*, that:

(a) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

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

Section 5.13. *Waiver of Past Defaults.* The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may, on behalf of the Holders of all the Securities of such series, waive any past default hereunder with respect to such series and its consequences, except a default not theretofore cured:

(a) in the payment of principal, premium, if any, or interest, if any, on any Security of such series, or in the payment of any sinking or purchase fund or analogous obligation with respect to the Securities of such series, or

(b) in respect of a covenant or provision in this Indenture which, under Article 9 hereof, cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series.

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 5.14. *Undertaking for Costs.* All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party

litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series to which the suit relates, or to any suit instituted by any Securityholder for the enforcement of the payment of principal, premium, if any, or interest, if any, on any Security on or after the respective payment dates expressed in such Security (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date).

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

ARTICLE 6  
THE TRUSTEE

Section 6.01. *Certain Duties and Responsibilities of Trustee.* (a) Except during the continuance of an Event of Default with respect to any series of Securities,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Securities of such series, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to any series of Securities has occurred and is continuing, the Trustee shall exercise, with respect to the Securities of such series, such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(i) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section 6.01;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the Outstanding Securities of any series relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustee with respect to the Securities of such series, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

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

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

Section 6.02. *Notice of Defaults.* Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however,* that, except in the case of a default in the payment of the principal, premium, if any, or interest, if any, on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation with respect to Securities of such series, the Trustee shall be protected in withholding

such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series and; *provided, further*, that, in the case of any default of the character specified in Section 5.01(d) with respect to Securities of such series, no such notice to Securityholders of such series shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section 6.02, the term "default", with respect to Securities of any series, 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 6.03. *Certain Rights of Trustee*. Except as otherwise provided in Section 6.01 above:

(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 or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction or order of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order 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 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 any Opinion of Counsel shall be a 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 this Indenture at the request or direction of any of the Securityholders pursuant to this Indenture, unless such Securityholders 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 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 the books, records and premises of the Company, personally or by agent or attorney;

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

(h) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

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

(j) in no event shall the Trustee be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Trustee has been advised of the possibility of such damages; and

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

Section 6.04. *Not Responsible for Recitals or Issuance of Securities.* The recitals contained herein and in the Securities, except the certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.05. *May Hold Securities.* The Trustee or any Paying Agent, Security Registrar, or other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.08 and 6.13 hereof, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, or such other agent.

Section 6.06. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.07. *Compensation and Reimbursement.* The Company covenants and agrees:

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

(b) 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 reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

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

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Sections 5.01(e) and 5.01(f) above, such expenses (including the reasonable charges and expenses of its counsel) and compensation for such services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency, reorganization, or other similar law.

The Trustee shall have a lien prior to the Securities upon all property and funds held or collected by it as such for any amount owing to it or any predecessor Trustee pursuant to this Section 6.07, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

The provisions of this Section 6.07 shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture.

Section 6.08. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such interest or resign as Trustee with respect to one or more series of Securities, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 6.09. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series of Securities that shall be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia,

authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority, if there be such a corporation willing to act as Trustee on customary and usual terms. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.09, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section 6.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

*Section 6.10. 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 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign with respect to any one or more series of Securities at any time by giving at least 60 days' written notice thereof to the Company. If an instrument of acceptance by a successor Trustee 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.

(c) The Trustee may be removed with respect to any series of Securities at any time by Act of the Holders of 66 2/3% in principal amount of the Outstanding Securities of that series, delivered to the Trustee and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 above with respect to any series of Securities after written request therefor by the Company or by any Securityholder who has been a bona fide Holder of a Security of that series for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.09 above with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(iii) the Trustee shall become incapable of acting with respect to any series of Securities, or

(iv) the Trustee shall be adjudged as 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 (A) the Company may remove the Trustee, with respect to the series or, in the case of clause (iv), with respect to all series, or (B) subject to Section 5.14, any Securityholder 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 and the appointment of a successor Trustee with respect to the series or, in the case of clause (iv), with respect to all series.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of Trustee with respect to any series of Securities for any cause, the Company shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of 66 2/3% 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, become the successor Trustee with respect to such series and supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Securityholders of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been bona fide Holder of a Security of that 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 such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to any series and each appointment of a successor Trustee with respect to any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of that series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its principal Corporate Trust Office.

Section 6.11. *Acceptance of Appointment by Successor.* Every successor Trustee appointed hereunder with respect to all series of Securities shall execute, acknowledge and deliver to the Company and to the predecessor Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Trustee shall become effective, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Trustee with respect to any such series; but, on request of the Company or the successor Trustee, such predecessor Trustee shall, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the predecessor Trustee, and shall duly assign, transfer and

deliver to such successor Trustee all property and money held by such predecessor Trustee hereunder.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which (1) shall contain such provisions as shall be deemed necessary or desirable to transfer and to conform to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the appointment of such successor Trustee relates and (2) if the predecessor 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 predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor 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 and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; 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 and each 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; and, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all 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.

Upon request of any such 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 the first or second preceding paragraph, as the case may be.

No successor Trustee with respect to any series of Securities shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible with respect to that series under this Article 6.

Section 6.12. *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; *provided*, that such corporation shall be otherwise qualified and eligible under this Article 6, 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 Trustee 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 6.13. *Preferential Collection of Claims Against Company.* If and when the Trustee shall be or shall become a creditor, of the Company (or of any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or against any such other obligor, as the case may be).

Section 6.14. *Appointment of Authenticating Agent.* At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Company itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.14, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.14, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.14.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate

trust business of an Authenticating Agent, shall continue to be an Authenticating Agent; *provided*, that such corporation shall be otherwise eligible under this Section 6.14, 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, if other than the Company, to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and, if other than the Company, to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.14, the Trustee, with the approval of the Company, may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.14.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.14.

If an appointment with respect to one or more series is made pursuant to this Section 6.14, the Securities of such series may have endorsed thereon, in addition to 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 therein referred to in the within-mentioned Indenture.

UNION BANK, N.A., as Trustee

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

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

ARTICLE 7

SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01. *Company to Furnish Trustee Names and Addresses of Securityholders.* The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, not more than 15 days after January 1 and July 1, respectively in each year, in such form as the Trustee may reasonably require, a list of the names and addresses of the Holders of Securities of each series as of such 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*, that if the Trustee shall be the Security Registrar for such series, such list shall not be required to be furnished.

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

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

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

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



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

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

Section 7.03. *Reports by Trustee.* (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture, deliver to each Holder, as provided in the Trust Indenture Act Section 313(c), a brief report dated as of such May 15, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company as required by the Trust Indenture Act Section 313(d). The Company will promptly notify the Trustee when any Securities are listed on any stock exchange.

Section 7.04. *Reports by Company.* The Company will:

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

(b) 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 with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a) and (b) of this Section 7.04 as may be required by rules and regulations prescribed from time to time by the Commission.

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

#### ARTICLE 8

##### CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01. *Company May Consolidate, etc., Only on Certain Terms.* The Company shall not consolidate with or merge into any other corporation or convey or transfer all or substantially all of its properties and assets to any Person, unless:

(a) either the Company shall be the continuing corporation, or the corporation formed by such consolidation or into which the Company is merged

or the Person which acquires by conveyance or transfer all or substantially all of the properties and assets of the Company shall be a corporation organized and existing under the laws of the United States of America or any State or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal, premium, if any, and interest, if any, on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

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

(c) the Company has delivered to the Trustee an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance or transfer and any assumption permitted or required by this Article 8 complies with the provisions of this Article 8.

Section 8.02. *Successor Corporation Substituted.* Upon any consolidation or merger, or any conveyance or transfer of all or substantially all of the properties and assets of the Company in accordance with Section 8.01, the successor corporation formed by such consolidation or into which the Company is merged or the Person to which such conveyance or transfer 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 corporation had been named as the Company herein and the Company shall thereupon be released from all obligations hereunder and under the Securities. Such successor corporation thereupon may cause to be signed and may issue any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures Without Consent of Securityholders.* Without the consent of the Holders of any Securities, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (which shall conform to the provisions of the TIA as in force at the date of execution thereof), in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by any such successor of the covenants, agreements and obligations of the Company pursuant to Article 8 hereof; or
- (b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the Holders of the Securities of any or all series as the Company and the Trustee shall consider to be for the protection of the Holders of the Securities of any or all series or to surrender any right or power herein conferred upon the Company (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or
- (c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or in any supplemental indenture, or to make any other provisions with respect to matters or questions arising under this Indenture that do not adversely affect the interests of the Holders of Securities of any series in any material respect; or
- (d) to add to this Indenture such provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument is executed or any corresponding provision in any similar federal statute hereafter enacted; or
- (e) to add guarantors or co-obligors with respect to any series of Securities; or
- (f) to secure any series of Securities; or
- (g) to establish any form of Security, as provided in Article 2 hereof, and to provide for the issuance of any series of Securities, as provided in Article 3 hereof, and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or
- (h) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more

series of Securities 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 Section 6.11 hereof; or

(i) to add any additional Events of Default in respect of the Securities of any or all series (and if such additional Events of Default are to be in respect of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of one or more specified series); or

(j) to comply with the requirements of the Commission in connection with the qualification of this Indenture under the TIA; or

(k) to make any change in any series of Securities that does not adversely affect in any material respect the interests of the Holders of such Securities.

Section 9.02. *Supplemental Indentures With Consent of Securityholders.* With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture or indentures, by Act of said Holders delivered to the Company and the Trustee, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) change the Scheduled Maturity Date or the stated payment date of any payment of premium or interest payable on any Security, or reduce the principal amount thereof, or any amount of interest or premium payable thereon, or

(b) change the method of computing the amount of principal of any Security or any interest payable thereon on any date, or change any Place of Payment where, or the coin or currency in which, any Security or any payment of premium or interest thereon is payable, or

(c) impair the right to institute suit for the enforcement of any payment described in clauses (a) or (b) on or after the same shall become due and payable, whether at Maturity or, in the case of redemption or repayment, on or after the Redemption Date or the Repayment Date, as the case may be; or

(d) change or waive the redemption or repayment provisions of any series;

(e) 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

(f) modify any of the provisions of this Section 9.02 or Sections 5.13 or 10.06, 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; *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Sections 9.02 and Section 10.06, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.01(h); or

(g) adversely affect the ranking or priority of any series;

(h) release any guarantor or co-obligor from any of its obligations under its guarantee of the Securities or this Indenture, except in compliance with the terms of this Indenture; or

(i) waive any Event of Default pursuant to Sections 5.01(a), 5.01(b) or 5.01(c) hereof with respect to such Security.

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture that has expressly been included solely for the benefit of one or more particular series of Securities, or that 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 Securityholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.03. *Execution of Supplemental Indentures.* Upon request of the Company and upon filing with the Trustee of evidence of an Act of Securityholders as aforementioned, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, powers, trusts, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article 9 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) 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.

Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and the respective rights, limitation of rights, duties, powers, trusts and immunities under this Indenture of the Trustee, the Company, and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be determined, exercised and enforced thereunder to the extent provided therein.

Section 9.05. *Conformity With the Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article 9 shall conform to the requirements of the TIA as then in effect.

Section 9.06. *Reference in Securities to Supplemental Indentures.* Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 9 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 so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE 10  
COVENANTS

Section 10.01. *Payment of Principal, Premium and Interest.* With respect to each series of Securities, the Company will duly and punctually pay or cause to be paid the principal, premium, if any, and interest, if any, on such Securities in accordance with their terms and this Indenture, and will duly comply with all the other terms, agreements and conditions contained in the Indenture for the benefit of the Securities of such series.

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

Trustee and its agent to receive all such presentations, surrenders, notices and demands.

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

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

The Company will cause each Paying Agent other than the Trustee for any series of Securities 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 10.03, that such Paying Agent will:

- (a) hold all sums held by it for the payment of principal, premium, if any, or interest, if any, on Securities of such series in trust for the benefit of the Holders of the Securities entitled thereto until such sums shall be paid to such Holders of such Securities or otherwise disposed of as herein provided;
- (b) 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 such payment of principal, premium, if any, or interest, if any, on the Securities of such series; and
- (c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may, at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any series of Securities 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 in respect of each and every series of Securities as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Company in respect of all Securities, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent;



and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 10.04. *Certificate to Trustee.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company (beginning in 2010), an Officers' Certificate, one of whose signatories shall be the Company's principal executive, accounting or financial officer, stating that in the course of the performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any of its covenants, conditions or agreements contained herein (without regard to any period of grace or requirement of notice provided hereunder), stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

Section 10.05. *Corporate Existence.* Subject to Article 8 the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 10.06. *Waiver of Certain Covenants.* The Company may omit in respect of any series of Securities, in any particular instance, to comply with any covenant or condition set forth in Section 10.07 or 10.08, if before or after the time for such compliance the Holders of at least a majority in principal amount of the Securities at the time Outstanding of such series shall, by Act of such Securityholders, either waive such compliance in such instance or generally waive compliance with such covenant or condition; *provided*, that no waiver by the Holders of the Securities of such series shall extend to or affect such covenant 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 covenant or condition shall remain in full force and effect.

Section 10.07. *Limitation on Liens.* Unless otherwise provided in a particular series of Securities, so long as any of the senior Securities shall be Outstanding, neither the Company nor any Restricted Subsidiary of the Company will incur, suffer to exist, or guarantee any Debt, secured by a mortgage, pledge or lien (a "**Lien**") on any Principal Property or on any shares of stock of (or other interests in) any Restricted Subsidiary of the Company unless the Company or such first mentioned Restricted Subsidiary secures or the Company causes such Restricted Subsidiary to secure the senior Securities (and any other Debt of the Company or such Restricted Subsidiary, at the option of the Company or such Restricted Subsidiary, as the case may be, not subordinate to the senior Securities), equally and ratably with (or prior to) such secured Debt, for so long as such secured Debt shall be so secured. This restriction will not, however, apply to Debt secured by:

- (a) Liens existing prior to the issuance of the applicable senior Securities hereunder;

(b) Liens on property of or shares of stock of (or other interests in) any Entity existing at the time such Entity becomes a Restricted Subsidiary of the Company;

(c) Liens on property of or shares of stock of (or other interests in) any Entity existing at the time of acquisition thereof (including acquisition through merger or consolidation);

(d) Liens securing the payment of all or any part of the purchase price of any property or shares of stock of (or other interests in) any Entity or the cost of construction of such property (or additions, repairs, alterations, or improvements thereto),

(e) Liens securing indebtedness incurred to finance all or any part of the purchase price of any property or shares of stock of (or other interests in) any Entity or the cost of construction of such property (or additions, repairs, alterations or improvements thereto), *provided* that such Lien and the indebtedness secured thereby are incurred prior to, at the time of, or within 180 days after the later of the acquisition, the completion of construction (or addition, repair, alteration or improvement) or the commencement of full operation of such property or within 180 days after the acquisition of such shares (or other interests);

(f) Liens in favor of the Company or any of its Restricted Subsidiaries;

(g) Liens in favor of, or required by contracts with, governmental entities; or

(h) any extension, renewal, or refunding referred to in any of the preceding clauses (a) through (g).

Notwithstanding the foregoing, the Company or any of its Restricted Subsidiaries may incur, suffer to exist or guarantee any Debt secured by a Lien on any Principal Property or on any shares of stock of (or other interests in) any Restricted Subsidiary of the Company if, after giving effect thereto, and together with the value of Attributable Debt outstanding pursuant to Section 10.08(b), the aggregate amount of such Debt does not exceed 15% of Consolidated Net Tangible Assets of the Company.

The transfer of a Principal Property to an Unrestricted Subsidiary or the change in designation of a Subsidiary which owns a Principal Property from Restricted Subsidiary to Unrestricted Subsidiary shall not be restricted.

Section 10.08. *Limitation on Sale and Lease-Back Transactions.* (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, sell or transfer, directly or indirectly, except to the Company or a Restricted Subsidiary of the Company, any Principal Property as an entirety, or any substantial portion thereof, with the intention of taking back a lease of all or substantial part of such

property, except a lease for a period of three years or less at the end of which it is intended that the use of such property by the lessee will be discontinued; *provided*; that, notwithstanding the foregoing, the Company or any of its Restricted Subsidiaries may sell a Principal Property (as such term is defined with respect to the Company) and lease it back for a period longer than three years (i) if the Company or such Restricted Subsidiary would be entitled, pursuant to Section 10.07, to create a Lien on the property to be leased securing Debt in an amount equal to the Attributable Debt with respect to the sale and lease-back transaction without equally and ratably securing the Outstanding Securities or (ii) if (A) the net proceeds of such sale and lease-back transactions are at least equal to the fair value (as determined by a Board Resolution) of such property and (B) the Company causes an amount equal to the net proceeds of such sale and lease-back transactions to be applied within 180 days of such sale and lease-back transaction to any (or a combination) of (i) the prepayment or retirement of the Outstanding Securities, (ii) the prepayment or retirement (other than any mandatory retirement, mandatory prepayment or sinking fund payment or by payment at maturity) of other Debt of the Company or its Restricted Subsidiaries (other than Debt that is subordinated to the Outstanding Securities or Debt owed to the Company or one of its Restricted Subsidiaries) that matures more than 12 months after its creation or matures less than 12 months after its creation but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond 12 months from its creation or (iii) the purchase, construction, development, expansion or improvement of other comparable property.

(b) Notwithstanding Section 10.08(a), the Company or any Restricted Subsidiary of the Company may enter into sale and lease-back transactions in addition to those permitted by Section 10.08(a), and without any obligation to retire any outstanding Debt or to any purchase property or assets; *provided*, that at the time of entering into such sale and lease-back transactions and after giving effect thereto, the Attributable Debt with respect to such transaction, together with all Debt outstanding pursuant to the second paragraph of Section 10.07, without duplication, does not exceed 15% of Consolidated Net Tangible Assets of the Company.

ARTICLE 11  
REDEMPTION OF SECURITIES

Section 11.01. *Applicability of Article.* The Company may reserve the right to redeem and pay before the Scheduled Maturity Date all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Sections 2.02 and 2.03 or as otherwise provided in Section 3.01, and on such terms as are specified in such form or in the indenture supplemental hereto with respect to Securities of such series as provided in Section 3.01. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this

Article 11 does not conflict with such terms, the succeeding Sections of this Article 11.

Section 11.02. *Election to Redeem; Notice to Trustee.* In case of any redemption at the election of the Company, 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. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 11.03. *Selection by Trustee of Securities to be Redeemed.* If fewer than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate, which may include provision for the selection for redemption of portions of the principal of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security 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 Security redeemed or to be redeemed only in part, to the portion of the principal of such Security which has been or is to be redeemed.

Section 11.04. *Notice of Redemption.* Notice of redemption shall be given by first-class mail, postage prepaid, mailed not fewer than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his or her address appearing in the Security Register on the applicable Record Date.

All notices of redemption shall state:

- (1) the Redemption Date;

(2) the Redemption Price, or if not then ascertainable, the manner of calculation thereof;

(3) if fewer than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Securities to be redeemed, from the Holder to whom the notice is given and that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of the same series in the aggregate principal amount equal to the unredeemed portion thereof will be issued in accordance with Section 11.07;

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security, and that interest, if any, thereon shall cease to accrue from and after said date;

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, which shall be the office or agency maintained by the Company in the Place of Payment pursuant to Section 10.02 hereof; and

(6) that the redemption is on account of a sinking or purchase fund, or other analogous obligation, if that be the case.

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 11.05. *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

Section 11.06. *Securities Payable on Redemption Date.* Notice of Redemption having been given as aforesaid, the Securities 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) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with the notice, such Securities shall be paid by the Company at the Redemption Price. Any installment of interest due and payable on or prior to the Redemption Date shall be payable to the Holders of such Securities registered as such on the relevant Record Date according to the terms and the provisions of Section 3.07 above; unless, with respect to an Interest Payment Date that falls on a Redemption Date, such Securities provide that interest due on such date is to be paid to the Person to whom principal is payable.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the

Redemption Date at the rate borne by the Security, or as otherwise provided in such Security.

Section 11.07. *Securities Redeemed in Part.* Any Security that is to be redeemed only in part shall be surrendered at the office or agency maintained by the Company in the Place of Payment pursuant to Section 10.02 hereof with respect to that series (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 and at the expense of the Company, a new Security or Securities of the same series, tenor, terms and Scheduled Maturity Date, of any authorized denomination as requested by such Holders in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

Section 11.08. *Provisions with Respect to any Sinking Funds.* Unless the form or terms of any series of Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Securities in cash, the Company may at its option (a) deliver to the Trustee for cancellation any Securities of such series theretofore acquired by the Company, or (b) receive credit for any Securities of such series (not previously so credited) acquired or redeemed by the Company (other than through operation of a mandatory sinking fund) and theretofore delivered to the Trustee for cancellation, and if it does so then: (i) Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to Securities of such series, and (ii) on or before the 60th day next preceding each sinking fund Redemption Date with respect to such series of Securities, the Company will deliver to the Trustee (A) an Officers' Certificate specifying the portions of such sinking fund payment to be satisfied by payment of cash and by the delivery or credit of Securities of such series acquired or redeemed by the Company, and (B) such Securities, to the extent not previously surrendered. Such Officers' Certificate shall also state the basis for any such credit and that the Securities for which the Company elects to receive credit have not been previously so credited and were not acquired by the Company through operation of the mandatory sinking fund, if any, provided with respect to such Securities and shall also state that no Event of Default with respect to Securities of such series has occurred and is continuing. All Securities so delivered to the Trustee shall be canceled by the Trustee and no Securities shall be authenticated in lieu thereof.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to

Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 11.06. The Trustee shall select, in the manner provided in Section 11.03, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 11.04 (and with the effect provided in Section 11.06) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 11.08. Any and all sinking fund moneys with respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

On or before each sinking fund Redemption Date provided with respect to Securities of any series, the Company shall pay to the Trustee in cash a sum equal to all accrued interest, if any, to the date fixed for redemption on Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 11.08.

The Trustee shall not redeem any Securities with sinking fund moneys or give any notice of redemption of Securities by operation of the applicable sinking fund during the continuance of a default in payment of interest on Securities of such series or of any Event of Default with respect to such series, except that if the notice of redemption of any Securities shall theretofore have been mailed in accordance with the provisions hereof, the Trustee shall redeem such Securities if cash sufficient for that purpose shall be deposited with the Trustee for that purpose in accordance with the terms of this Article 11. Except as aforesaid, any moneys in the sinking fund with respect to Securities of any series at the time when any such default or Event of Default with respect to such series shall occur, and any moneys thereafter paid into such sinking fund shall, during the continuance of such default or Event of Default with respect to such series, be held as security for the payment of all Securities of such series; *provided, however*, that in case such default or Event of Default with respect to such series shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date on which such moneys may be applied pursuant to the provisions of this Section 11.08.

ARTICLE 12  
REPAYMENT AT OPTION OF HOLDERS

Section 12.01. *Applicability of Article.* Repayment of Securities of any series before their Scheduled Maturity Date at the option of Holders thereof shall be made in accordance with the terms of such Securities and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article 12.

Section 12.02. *Repayment of Securities.* Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest thereon accrued to the Repayment Date specified in the terms of such Securities. On or before the Repayment Date, the Company will deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Repayment Price of all the Securities which are to be repaid on such date.

Section 12.03. *Exercise of Option.* Securities of any series subject to repayment at the option of the Holders thereof will contain an "Option to Elect Repayment" form on the reverse of such Securities. To be repaid at the option of the Holder, any Security so providing for such repayment, with the "Option to Elect Repayment" form on the reverse of such Security duly completed by the Holder, must be received by the Company at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Company shall from time to time notify the Holders of such Securities) not earlier than 30 days nor later than 15 days prior to the Repayment Date. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of \$1,000 unless otherwise specified in the terms of such Security, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered that is not to be repaid must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part, if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Company.

Section 12.04. *When Securities Presented for Repayment Become Due and Payable.* If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article 12 and as provided by the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall



be paid by the Company on the Repayment Date therein specified, and on and after such Repayment Date (unless the Company shall default in the payment of such Securities on such Repayment Date) interest on such Securities or the portions thereof, as the case may be, shall cease to accrue.

Section 12.05. *Securities Repaid in Part.* Upon surrender of any Security which is to be repaid in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the Company, a new Security or Securities of the same series, tenor, terms and Scheduled Maturity Date, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

ARTICLE 13  
SUBORDINATION OF SUBORDINATED SECURITIES

Section 13.01. *Agreement to Subordinate.* The Company covenants and agrees, and each Holder of any Subordinated Security issued hereunder by his acceptance thereof, whether upon original issue or upon transfer or assignment, likewise covenants and agrees, that the principal of (and premium, if any) and interest on each and all of the Subordinated Securities issued hereunder are hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness.

Section 13.02. *Payment on Dissolution, Liquidation or Reorganization; Default on Senior Indebtedness.*

Upon any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities, upon any dissolution or winding up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other similar proceedings, or upon any assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, all principal of (and premium, if any) and interest then due upon all Senior Indebtedness shall first be paid in full, or payment thereof provided for in money or money's worth, before the Holders of the Subordinated Securities or the Trustee on their behalf shall be entitled to receive any assets or securities (other than 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, junior to, or the payment of which is subordinated at least to the extent provided in this Article 13 to the payment of, all Senior Indebtedness which may at the time be outstanding or any securities issued in respect thereof under any such plan of reorganization or readjustment) in respect of the Subordinated Securities (for principal, premium or interest). Upon any such dissolution or winding up or liquidation or reorganization, any payment or

distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (other than as aforesaid), to which the Holders of the Subordinated Securities or the Trustee on their behalf would be entitled, except for the provisions of this Article 13, shall be made by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, direct to the holders of Senior Indebtedness or their representatives to the extent necessary to pay all Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness. In the event that, notwithstanding the foregoing, the Trustee or the Holder of any Subordinated Security shall, under the circumstances described in the two preceding sentences, have received any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities (other than as aforesaid) before all Senior Indebtedness is paid in full or payment thereof provided for in money or money's worth, and if such fact shall then have been made known to the Trustee or, as the case may be, such Holder, then such payment or distribution of assets or securities of the Company shall be paid over or delivered forthwith to the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making payment or distribution of assets or securities of the Company for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.

Subject to the payment in full of all Senior Indebtedness, the Holders of the Subordinated Securities (together with the holders of any indebtedness of the Company which is subordinate in right of payment to the payment in full of all Senior Indebtedness and which is not subordinate in right of payment to the Subordinated Securities) shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distribution of assets or securities of the Company applicable to Senior Indebtedness until the principal of (and premium, if any) and interest on the Senior Indebtedness shall be paid in full. No such payments or distributions applicable to Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Subordinated Securities, be deemed to be a payment by the Company to or on account of the Subordinated Securities, it being understood that the provisions of this Article 13 are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this Article 13 or elsewhere in this Indenture or in the Subordinated Securities is intended to or shall impair, as between the Company and the Holders of Subordinated Securities, the obligation of the Company, which is unconditional and absolute, to pay to the Holders of the Subordinated Securities the principal of (and premium, if any) and interest on the Subordinated Securities as and when the same shall become due and payable in accordance with their terms, or to affect (except to the extent specifically provided above in this paragraph) the relative

rights of the Holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness. Nothing contained herein shall prevent the Trustee or the Holder of any Subordinated Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 13, of the holders of Senior Indebtedness in respect of assets or securities of the Company of any kind or character, whether cash, property or securities, received upon the exercise of any such remedy.

Upon any payment or distribution of assets or securities of the Company referred to in this Article 13, the Trustee and the Holders of the Subordinated Securities shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, and upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making any such payment or distribution, delivered to the Trustee or to the Holders of the Subordinated Securities for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 13.

If:

(i) there shall have occurred a default in the payment on account of the principal of (or premium, if any) or interest on or other monetary amounts due and payable on any Senior Indebtedness, or

(ii) any other default shall have occurred concerning any Senior Indebtedness which permits the holder or holders thereof to accelerate the maturity of such Senior Indebtedness following notice, the lapse of time, or both, or

(iii) during any time Senior Indebtedness is outstanding, the principal of, and accrued interest on, any series of Subordinated Securities shall have been declared due and payable upon an Event of Default pursuant to Section 5.02 hereof (and such declaration shall not have been rescinded or annulled pursuant to this Indenture);

then, unless and until such default shall have been cured or waived or shall have ceased to exist, or such declaration shall have been waived, rescinded or annulled, no payment shall be made by the Company on account of the principal (or premium, if any) or interest on the Subordinated Securities.

The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a

representative of such holder or a trustee under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued) to establish that such notice has been given by a holder of such Senior Indebtedness or such representative or trustee on behalf of such holder. 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 Article 13, 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, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article 13, 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 or distribution.

Section 13.03. *Payment Prior to Dissolution or Default.* Nothing contained in this Article 13 or elsewhere in this Indenture, or in any of the Subordinated Securities, shall prevent (a) the Company, at any time except under the conditions described in Section 13.02 or during the pendency of any dissolution or winding up or total or partial liquidation or reorganization proceedings therein referred to, from making payments at any time of principal of (or premium, if any) or interest on Subordinated Securities or from depositing with the Trustee or any Paying Agent moneys for such payments, or (b) the application by the Trustee or any Paying Agent of any moneys deposited with it under this Indenture to the payment of or on account of the principal of (or premium, if any) or interest on Subordinated Securities to the Holders entitled thereto if such payment would not have been prohibited by the provisions of Section 13.02 on the day such moneys were so deposited.

Notwithstanding the provisions of Section 13.01 or any other provision of this Indenture, the Trustee and any Paying Agent shall not be charged with knowledge of the existence of any Senior Indebtedness, or of the occurrence of any default with respect to Senior Indebtedness of the character described in Section 13.02, or of any other facts which would prohibit the making of any payment of moneys to or by the Trustee or such Paying Agent, unless and until the Trustee shall have received, no later than three Business Days prior to such payment, written notice thereof from the Company or from a holder of such Senior Indebtedness and the Trustee shall not be affected by any such notice which may be received by it on or after such third Business Day.

Section 13.04. *Securityholders Authorize Trustee to Effectuate Subordination of Securities.* Each Holder of Subordinated Securities by his or her acceptance thereof authorizes and expressly directs the Trustee on his or her behalf to take such action in accordance with the terms of this Indenture as may be necessary or appropriate to effectuate the subordination provisions contained in this Article 13 and to protect the rights of the Holders of Subordinated Securities

pursuant to this Indenture, and appoints the Trustee his or her attorney-in-fact for such purpose.

Section 13.05. *Right of Trustee to Hold Senior Indebtedness.* The Trustee shall be entitled to all of the rights set forth in this Article 13 in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

Section 13.06. *Article 13 Not to Prevent Events of Default.* The failure to make a payment on account of principal of, premium, if any, or interest on the Subordinated Securities by reason of any provision of this Article 13 shall not be construed as preventing the occurrence of an Event of Default under Section 5.01 or an event which with the giving of notice or lapse of time, or both, would become an Event of Default or in any way prevent the Holders of Subordinated Securities from exercising any right hereunder other than the right to receive payment on the Subordinated Securities.

Section 13.07. *No Fiduciary Duty of Trustee to Holders of Senior Indebtedness.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders (other than for its willful misconduct, bad faith or negligence) if it shall in good faith mistakenly pay over or distribute to the Holders of Subordinated Securities or the Company or any other Person, cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 13 or otherwise. Nothing in this Section 13.07 shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such payment over to, the holders of Senior Indebtedness or their representative. Nothing in this Article 13 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.07 of the Indenture.

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

ITT Corporation

By: \_\_\_\_\_  
Name:  
Title:

UNION BANK, N.A., as Trustee

By: \_\_\_\_\_  
Name:  
Title:

State of New York

ss.:

County of New York

On the            day of            before me personally came            to me known, who, being by me duly sworn, did depose and say that he/she resides at 551 Madison Avenue, 11<sup>th</sup> Floor, New York, New York 10022; that he/she is a            of UNION BANK, N.A., one of the parties described in and which executed the above instrument; and that he/she signed his/her name thereto by authority of the board of directors of said corporation.

Name  
Notary Public, State of New York  
No.  
Qualified in  
Commission Expires

State of New York

ss.:

County of

On the       day of       before me personally came       , to me known, who, being by me duly sworn, did depose and say that he/she resides at 1133 Westchester Avenue, White Plains, New York; that he/she is the       of ITT Corporation, one of the parties described in and which executed the above instrument; and that he/she signed his/her name thereto by authority of the board of directors of said corporation.

Name

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Notary Public, State of New York

No.

Qualified in

Commission Expires



SIMPSON THACHER & BARTLETT LLP  
425 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017-3954  
(212) 455-2000

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FACSIMILE (212) 455-2502

April 28, 2009

ITT Corporation  
1133 Westchester Avenue  
White Plains, New York 10604

Ladies and Gentlemen:

We have acted as counsel to ITT Corporation, an Indiana corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to (i) shares of common stock of the Company, par value \$1.00 per share (the "Common Stock"); (ii) shares of preferred stock of the Company, without par value (the "Preferred Stock"); (iii) debt securities of the Company (the "Debt Securities"); (iv) warrants to purchase Debt Securities (the "Warrants"); (v) units of the Company consisting of two or more of the securities described under clauses (i) through (iv) in any combination (the "Units"); and (vi) Debt Securities that may be issued upon exercise of Warrants. The Common Stock, the Preferred Stock, the Debt Securities, the Warrants and the Units are hereinafter referred to collectively as the "Securities." The Securities may be issued and sold or delivered from time to time as set forth in the Registration Statement, any

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amendment thereto, the prospectus contained therein (the "Prospectus") and supplements to the Prospectus and pursuant to Rule 415 under the Securities Act in an indeterminate amount.

The Debt Securities, if any, will be issued under an indenture (the "Base Indenture" and, together with any supplemental indentures relating to the Base Indenture, the "Indenture") between the Company and Union Bank, N.A., as Trustee (the "Trustee").

The Warrants, if any, will be issued under a Warrant Agreement (the "Warrant Agreement") to be entered into between the Company and the debt warrant agent. Each party to a Warrant Agreement other than the Company is referred to hereinafter as a "Counterparty."

The Units, if any, will be issued under a unit agreement (the "Unit Agreement") to be entered into between the Company and a unit agent (the "Unit Agent").

We have examined the Registration Statement and the form of the Base Indenture which has been filed with the Commission as an exhibit to the Registration Statement. We also have examined the originals, or duplicates or certified or conformed copies, of such corporate and other records, agreements, documents and other instruments and have made such other investigations as we have deemed relevant and necessary in connection with the opinions hereinafter set forth. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Company.

In rendering the opinions set forth below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies, and the authenticity of the originals of such latter documents. We also have assumed that: (1) at the time of execution, authentication, issuance and delivery of

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the Debt Securities, the Indenture will be the valid and legally binding obligation of the Trustee; (2) at the time of execution, countersignature, issuance and delivery of any Warrants, the related Warrant Agreement will be the valid and legally binding obligation of each Counterparty thereto; and (3) at the time of execution, countersignature, issuance and delivery of any Units, the related Unit Agreement will be the valid and legally binding obligation of the Unit Agent.

We have assumed further that (1) at the time of execution, authentication, issuance and delivery of the Indenture and the Debt Securities, the Indenture will have been duly authorized, executed and delivered in accordance with the law of the State of Indiana, (2) at such time, the Company will be validly existing and in good standing under the law of the State of Indiana and (3) the execution, delivery and performance by the Company of the Indenture and the Debt Securities will not violate the law of the State of Indiana or any other applicable laws (excepting the law of the State of New York and the federal law of the United States) and will not constitute a breach or violation of any agreement or instrument which is binding upon the Company or the Company's Restated Certificate of Incorporation and Amended By-laws.

We have assumed further that (1) at the time of execution, countersignature, issuance and delivery of any Warrants, the related Warrant Agreement will have been duly authorized, executed and delivered by the Company, (2) at such time, the Company will be validly existing and in good standing under the law of the State of Indiana and (3) the execution, delivery and performance by the Company of such Warrant Agreement and such Warrants will not violate the law of the State of Indiana or any other applicable laws (excepting the law of the State of New York and the federal law of the United States) and will not constitute a breach or violation of any agreement or instrument which is binding upon the Company or the Company's Restated Certificate of Incorporation and Amended By-laws.

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We have assumed further that (1) at the time of execution, countersignature, issuance and delivery of any Units, the related Unit Agreement will have been duly authorized, executed and delivered by the Company, (2) at such time, the Company will be validly existing and in good standing under the law of the State of Indiana and (3) the execution, delivery and performance by the Company of such Unit Agreement and such Units will not violate the law of the State of Indiana or any other applicable laws (excepting the law of the State of New York and the federal law of the United States) and will not constitute a breach or violation of any agreement or instrument which is binding upon the Company.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that:

1. With respect to the Debt Securities, assuming (a) the taking of all necessary corporate action to approve the issuance and terms of any Debt Securities, the terms of the offering thereof and related matters by the Board of Directors of the Company, a duly constituted and acting committee of such Board or duly authorized officers of the Company (such Board of Directors, committee or authorized officers being referred to herein as the "Board") and (b) the due execution, authentication, issuance and delivery of such Debt Securities, upon payment of the consideration therefor provided for in the definitive purchase, underwriting or similar agreement approved by the Board and otherwise in accordance with the provisions of the Indenture and such agreement, such Debt Securities will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms.
  2. With respect to the Warrants, assuming (a) the taking of all necessary corporate action by the Board to approve the execution and delivery of a related Warrant Agreement in the form filed as an exhibit to the Registration Statement and (b) the due execution, countersignature, issuance and delivery of such Warrants, upon payment of the consideration for such Warrants provided for in the applicable definitive purchase, underwriting or similar agreement approved by the Board and otherwise in accordance with the provisions of the applicable Warrant Agreement and such agreement, such Warrants will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms.
  3. With respect to the Units, assuming (a) the taking of all necessary corporate action to authorize and approve the issuance and terms of any Units, the terms of the offering thereof and related matters by the Board, (b) any Common Stock and Preferred Stock that are components of the Units are validly issued, fully paid and nonassessable and (c) any Debt
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Securities and Warrants that are components of any Units constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, such Units will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms.

Our opinions set forth in paragraphs 1 through 3 above are subject to the effects of (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law) and (iii) an implied covenant of good faith and fair dealing.

We do not express any opinion herein concerning any law other than the law of the State of New York and the federal law of the United States.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus included in the Registration Statement.

Very truly yours,

/s/ Simpson Thacher & Bartlett LLP

SIMPSON THACHER & BARTLETT LLP

April 28, 2009

ITT Corporation  
1133 Westchester Avenue,  
White Plains, New York 10604

Ladies and Gentlemen:

We have acted as special Indiana counsel to ITT Corporation, an Indiana corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") being filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to (i) shares of common stock of the Company, par value \$1.00 per share (the "Common Stock"); (ii) shares of preferred stock of the Company, without par value (the "Preferred Stock"); (iii) debt securities of the Company (the "Debt Securities"); (iv) warrants to purchase Debt Securities (the "Warrants"); (v) units of the Company consisting of two or more of the securities described under clauses (i) through (iv) in any combination (the "Units"); and (vi) Debt Securities that may be issued upon exercise of Warrants. The Common Stock, the Preferred Stock, the Debt Securities, the Warrants and the Units are hereinafter referred to collectively as the "Securities." The Securities may be issued and sold or delivered from time to time as set forth in the Registration Statement, any amendment thereto, the prospectus contained therein (the "Prospectus") and supplements to the Prospectus and pursuant to Rule 415 under the Securities Act in an indeterminate amount.

We have examined the Registration Statement, the Restated Articles of Incorporation ("Articles") and By-Laws of the Company, each in the form filed with the Commission. We have also examined the

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originals, or duplicates or certified or conformed copies, of such corporate and other records, agreements, documents and other instruments and have made such other investigations as we have deemed relevant and necessary in connection with the opinions hereinafter set forth. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Company.

In rendering the opinions set forth below, we have assumed, without independent verification: (a) the legal capacity of all natural persons; (b) the genuineness of all signatures; (c) the authenticity of all documents submitted to us as originals; (d) the conformity to original documents of all documents submitted to us as certified, conformed, photostatic or facsimile copies; (e) the authenticity of the originals of such latter documents; (f) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments, certificates and records we have reviewed; and (g) the absence of any undisclosed modifications to the agreements and instruments reviewed by us. In rendering the opinions set forth below, we have also assumed that, at the time of issuance of any Common Stock or Preferred Stock, (a) the Articles, the By-Laws and the Indiana Business Corporation Law shall not have been amended after the date hereof so as to affect the validity of such issuance, and (b) there shall be sufficient Common Stock and Preferred Stock authorized under the Articles (as then in effect) and not otherwise reserved for issuance. Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that:

1. With respect to the Common Stock, assuming (a) the taking by the Board of Directors of the Company of all necessary corporate action to authorize and approve the issuance of the Common Stock and (b) due issuance and delivery of the Common Stock, upon payment therefor in accordance with the applicable definitive purchase or underwriting agreement approved by the Board of Directors of the Company, the Common Stock will be validly issued, fully paid and nonassessable.

2. With respect to the Preferred Stock, assuming (a) the taking by the Board of Directors of the Company of all necessary corporate action to authorize and approve the issuance of the Preferred Stock in accordance with the Articles, (b) due filing of the Amendment to the Articles designating the terms of the Preferred Stock and (c) due issuance and delivery of the Preferred Stock, upon payment therefor in accordance with the applicable definitive purchase or underwriting agreement approved by the Board of Directors of the Company, the Preferred Stock will be validly issued, fully paid and nonassessable.

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We do not express any opinion herein concerning any law other than the law of the State of Indiana.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.2 to the Registration Statement. We also hereby consent to the use of our name under the heading "Legal Matters" in the prospectuses which form a part of the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Baker & Daniels LLP

BAKER & DANIELS LLP



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our reports dated February 25, 2009, relating to the consolidated financial statements of ITT Corporation and subsidiaries (the "Company") (which report expresses an unqualified opinion and includes explanatory paragraphs relating to the Company's adoption of new accounting standards) and the effectiveness of the Company's internal control over financial reporting, appearing in the Annual Report on Form 10-K of ITT Corporation for the year ended December 31, 2008, and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Deloitte & Touche LLP

April 28, 2009

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE  
Check if an Application to Determine Eligibility of  
a Trustee Pursuant to Section 305(b)(2)

UNION BANK, NATIONAL ASSOCIATION  
(Exact name of Trustee as specified in its charter)

94-0304228  
I.R.S. Employer Identification No.

400 California Street  
San Francisco, California  
(Address of principal executive offices)

94104  
(Zip Code)

Eva Aryeetey  
Union Bank, N.A.  
551 Madison Avenue  
Corporate Trust — 11<sup>th</sup> Floor  
New York, NY 10022  
(646) 452-2005  
(Name, address and telephone number of agent for service)

ITT Corporation  
(Issuer with respect to the Securities)

State of Indiana  
(State or other jurisdiction of incorporation or  
organization)

13-5158950  
(I.R.S. Employer Identification No.)

1133 Westchester Avenue, White Plains, NY  
(Address of principal executive offices)

10604  
(Zip Code)

Debt Securities  
(Title of the indenture securities)

**FORM T-1**

**Item 1. GENERAL INFORMATION.** Furnish the following information as to the Trustee.

- a) *Name and address of each examining or supervising authority to which it is subject.*  
Comptroller of the Currency  
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*  
Trustee is authorized to exercise corporate trust powers.

**Item 2. AFFILIATIONS WITH OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

*In answering this item, the trustee has relied, in part, upon information furnished by the obligor and the underwriters, and the trustee disclaims responsibility for the accuracy or completeness of such information. The trustee has also examined its own books and records for the purpose of answering this item.*

**Items 3-15** *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

**Item 16. LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

- 1. A copy of the Articles of Association of the Trustee. Attached as Exhibit 1.
  - 2. A copy of the certificate of authority of the Trustee to commence business. Attached as Exhibit 2.
  - 3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers. Attached as Exhibit 2.
  - 4. A copy of the existing bylaws of the Trustee. Attached as Exhibit 4.
  - 5. A copy of each Indenture referred to in Item 4, if the obligor is in default. Not applicable.
  - 6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939. Attached as Exhibit 6.
  - 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority. Attached as Exhibit 7.
-

**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, Union Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of New York, State of New York on the 28 day of April, 2009.

**Union Bank, N.A.**

By: /s/ Eva Aryeetey

Name: Eva Aryeetey

Title: Vice President

EXHIBIT 1  
ARTICLES OF ASSOCIATION  
OF  
UNION BANK, NATIONAL ASSOCIATION  
(Restated as of December 18, 2008)

FIRST. The name of this Association shall be "Union Bank, National Association."

SECOND. The head office of this Association shall be in the City and County of San Francisco, State of California. The general business of the Association shall be conducted at its head office and its legally established branches.

THIRD. The board of directors of this Association shall consist of not less than five (5) nor more than twenty-five (25) individuals, the exact number of directors within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of the shareholders at any annual or special meeting thereof. Unless otherwise provided by the laws of the United States, any vacancy in the board of directors for any reason, including an increase in the number thereof, may be filled by action of the board of directors, though less than a quorum.

FOURTH. The annual meeting of the shareholders for the election of directors and the transaction of whatever other business may be brought before said meeting shall be held at the head office or such other place as the board of directors may designate, on the date of each year specified therefor in the Bylaws, but if no election is held on that day, it may be held on any subsequent day according to the provisions of laws; and all elections shall be held according to such lawful regulations as may be prescribed by the board of directors.

Nominations for election to the board of directors may be made by the board of directors or by any shareholder of any outstanding class of capital stock of the Association entitled to vote for election of directors.

FIFTH. The amount of authorized capital stock of this Association shall be \$675,000,000, consisting of 45,000,000 shares of common stock of the par value of \$15 each, but said capital stock may be increased or decreased from time to time, in accordance with the provisions of the laws of the United States.

SIXTH. The board of directors shall appoint one of its members president of this Association, who shall be chairman of the board, unless the board appoints another director to be chairman. The board of directors shall have the power to appoint one or more vice presidents, and to appoint a cashier and such other officers and employees as may be required to transact the business of this Association.

The board of directors shall have the power to define the duties of the officers and employees of the Association; to fix the compensation to be paid to them; to dismiss them; to require bonds from them and to fix the penalty thereof; to regulate the manner in which any increase of the capital of the Association shall be made; to manage and administer the business and affairs of the Association; to make all Bylaws that it may be lawful for them to make; and generally to do and perform all acts that it may be legal for a board of directors to do and perform.

SEVENTH. The board of directors shall have the power to change the location of the head office to any other place within the limits of the City of San Francisco, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency; and shall have the power to establish or change the location of any branch or branches of the Association to any other location, without the approval of the shareholders but subject to the approval of the Comptroller of the Currency.

EIGHTH. The corporate existence of this Association shall continue until terminated in accordance with the laws of the United States.

NINTH. Special meetings of the shareholders of this Association may be called for any purpose at any time by the board of directors, the chairman of the board, the deputy chairman of the board, the president or by the majority shareholder. Unless otherwise provided by the laws of the United States, a notice of the time, place and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least ten (10) days prior to the date of such meeting to each shareholder of record at his address as shown upon the books of this Association, provided that said notice may be waived by a majority shareholder.

TENTH. These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount, voting in person or by proxy.

ELEVENTH. (a) This Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was an officer, employee or agent of the Association, or is or was serving at the request of the Association as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) This Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was an officer, employee or agent of the Association, or is or was serving at the request of the Association as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and expenses) actually or reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the

Association unless and only to the extent that the Superior Court of the State of California or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that an officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and expenses) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the shareholders of the Association.

(e) Expenses incurred by an officer in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized in this article. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The Association shall indemnify, to the fullest extent permitted by applicable law as then in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a member of the board of directors of the Association, or is or was serving at the request of the Association as a member of the board of directors or any committee thereof of another corporation, partnership, joint venture, trust or other enterprise (any such person, for the purposes of this subsection (f), a "director"), against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding; provided, however, that the Association is not authorized to provide indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"). The Association shall advance expenses incurred or to be incurred in defending any such proceeding to any such director.

(1) The following procedures shall apply with respect to advancement of expenses and the right to indemnification under this subsection (f):

(i) Advancement of Expenses. All reasonable expenses incurred by or on behalf of a director in connection with any proceeding shall be advanced to the director by the Association within twenty days after the receipt by the Association of a statement or statements from the director requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding.

Such statement or statements shall reasonably evidence the expenses incurred or to be incurred by the director and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the director to repay the amounts advanced if it should ultimately be determined that the director is not entitled to be indemnified against such expenses.

(ii) **Written Request for Indemnification.** To obtain indemnification under this subsection (f), a director shall submit to the Secretary of the Association a written request, including such documentation and information as is reasonably available to the director and reasonably necessary to determine whether and to what extent the director is entitled to indemnification (the "Supporting Documentation"). Any claim for indemnification under this Article Eleventh shall be paid in full within thirty days after receipt by the Association of the written request for indemnification together with the Supporting Documentation unless independent legal counsel to the Association, acting at the request of the Board of Directors of the Association (or a committee of the Board designated by the Board for such purpose), shall have determined, in a written legal opinion to the Association without material qualification, that the director is not entitled to indemnification by reason of any of the circumstances specified in the proviso to the first sentence of this subsection (f) or in subsection (k) of this Article Eleventh. The Secretary of the Association shall, promptly upon receipt of such a request for indemnification, advise the board of directors in writing that the director has requested indemnification and shall promptly, upon receipt of any such opinion, advise the Board in writing that such determination has been made.

Notwithstanding the foregoing, the Association shall not be required to advance such expenses to a director who is a party to an action, suit or proceeding brought by the Association and approved by a majority of the board of directors which alleges willful misappropriation of corporate assets by such director, a transaction in which the director derived an improper personal benefit or any other willful and deliberate breach in bad faith of such director's duty to the Association or its shareholders.

(2) The rights to indemnification and to the advancement of expenses conferred in this subsection (f) shall be contract rights. If a claim under this subsection (f) is not paid in full by the Association within thirty days after a written claim has been received by the Association, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the director may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Association to recover an advancement of expenses pursuant to the terms of an undertaking, the director shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by a director to enforce a right to indemnification hereunder (but not in a suit brought by the director to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Association to recover an advancement of expenses pursuant to the terms of an undertaking the Association shall be entitled to recover such expenses upon a final adjudication that, the director has not met any applicable standard for indemnification under the applicable law then in effect. Neither the failure of the Association to have made payment in full of the claim for indemnification prior to the commencement of such suit, nor an actual determination by independent legal counsel to the Association that the director is not entitled to such indemnification, shall create a presumption that the director has not met the applicable standard of conduct or,



in the case of such a suit brought by the director, be a defense to such suit. In any suit brought by the director to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Association to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the director is not entitled to be indemnified, or to such advancement of expenses, under this subsection (f) or otherwise shall be on the Association.

(g) The indemnification provided by this article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in this official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(h) This Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this article.

(i) For purposes of this article, references to "the Association" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this article with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(j) For purposes of this article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Association" shall include any service as a director, officer, employee or agent of the Association which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Association" as referred to in this article.

(k) Notwithstanding anything in this article to the contrary, the Association shall not indemnify any director, officer or employee nor purchase and maintain insurance on behalf of any director, officer or employee in circumstances not permitted by 12 C.F.R. Part 359.

(l) If any provision or provisions of this article shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions (including, without limitation, each portion of this article containing any such provision held to be invalid,

illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.”

TWELFTH. To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the Association shall not be personally liable to the Association, its shareholders or otherwise for monetary damage for breach of his or her duty as a director. Any repeal or modification of this article shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Association existing at the time of such repeal or modification.

Comptroller of the Currency  
Administrator of National Banks  
Washington, D.C. 20219

**Certificate of Corporate Existence and Fiduciary Powers**

I, John C. Dugan, Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., as amended, has possession, custody and control of all records pertaining to the chartering of all National Banking Associations.

“Union Bank, National Association,” San Francisco, California, (Charter No. 21541) is a National Banking Association formed under the laws of the United States and is authorized thereunder to transact the business of banking and exercise Fiduciary Powers on the date of this Certificate.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department in the City of Washington and District of Columbia, this January 8, 2009.

/s/ John C. Dugan

**Comptroller of the Currency**

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EXHIBIT 4  
BYLAWS  
of  
UNION BANK, NATIONAL ASSOCIATION  
(Restated as of December 18, 2008)

ARTICLE I  
Meetings of Shareholders

Section 1.1. Annual Meeting. The annual meeting of the shareholders shall be held each year on the date and at the time specified by the Board of Directors. At each annual meeting the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Notice of such meeting shall be mailed, postage prepaid, at least ten days and no more than 60 days prior to the date thereof by first class mail addressed to each shareholder at his address appearing on the books of the Association; provided, however, that the shareholders may waive notice of the annual meeting.

If for any cause an election of directors is not made on said day, the board of directors shall order the election to be held on some subsequent day, as soon thereafter as practicable, according to the provisions of law; and notice thereof shall be given in the manner herein provided for the annual meeting.

Section 1.2. Special Meetings. Except as otherwise specifically provided by statute, special meetings of the shareholders of this Association may be called for any purpose at any time by the board of directors, the chairman of the board, the deputy chairman of the board, the president or by the majority shareholder of this Association. Every such special meeting unless otherwise provided by law shall be called by mailing, first-class postage prepaid, not less than ten days prior to the date fixed for such meeting to each shareholder at his address appearing on the books of this Association, a notice stating the purpose of the meeting, provided that said notice may be waived by a majority shareholder.

Section 1.3. Nomination for Director. Nominations for election to the board of directors may be made by the board of directors or by any shareholder of any outstanding capital stock of the Association entitled to vote for the election of directors.

Section 1.4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing, but no officer or employee of this Association shall act as proxy.

Section 1.5. Quorum. The presence in person or by proxy of persons entitled to vote a majority of the issued and outstanding stock of this Association shall constitute a quorum for the transaction of business at any annual or special meeting of the shareholders, unless otherwise provided by law; but less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting unless otherwise provided by law of by the Articles of Association.

Section 1.6. Action by Shareholders. Except as provided by law, any action required to be taken at any annual or special meetings of the shareholders of this Association, or any action which may be taken at any annual or special meetings of the shareholders may be taken without a meeting and without a vote, if a consent in writing, setting forth the actions so taken, shall be signed by holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at the meeting at which all shareholders entitled to vote thereon were present and voted.

ARTICLE II  
Directors

Section 2.1. Board of Directors. The board of directors (henceforth referred to as the board) shall have the power to manage and administer the business and affairs of the Association. Except as specifically limited by law, all corporate powers of the Association shall be vested in and may be exercised by said board.

Section 2.2. Number. The board shall consist of not less than five nor more than twenty-five individuals, the exact number within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full board or by resolution of the shareholders at any meeting thereof; provided, however, that a majority of the full board may not increase the number of directors to a number which; (i) exceeds by more than two the number of directors last elected by shareholders where such number was fifteen or less; or (ii) to a number that exceeds by more than four the number of directors last elected by shareholders where such number was sixteen or more, but in no event shall the number of directors exceed twenty-five.

Section 2.3. Organizational Meeting. There shall be a meeting of the board immediately following the election of the board at the annual meeting of shareholders which meeting shall be held for the purpose of organization; no notice of such meeting need be given. If at the time fixed for such meeting there shall not be a quorum present, the directors present may adjourn the meeting from time to time until a quorum is obtained.

At such meeting, the board shall elect a chairman of the board, a president, a deputy chairman of the board and one or more vice chairmen of the board. The chairman shall preside at all directors' meetings and in his absence, the president and, then, in his absence, the deputy chairman and, in his absence, a vice chairman of the board shall preside at such meetings. In the absence of the chairman of the board, the president, the deputy chairman and the vice chairmen of the board, the board may appoint a chairman pro-tempore.

Section 2.4. Place, Date and Time of Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such places within or without the State of California and on such dates and at such times as the Board may from time to time determine by resolution or written consent.

Section 2.5. Special Meetings. Special meetings of the board may be called by the chairman, the president, the deputy chairman or by a majority of the board, of which notice shall be given to each director personally by telephone or facsimile, electronic mail or other electronic means or by leaving a written or printed notice at, or by mailing such notice to, the Director's residence or place of business at least 24 hours before the time appointed for such meeting, provided that said notice may be waived by a written consent by all the directors entitled to vote at such meeting.

Section 2.6. Quorum. A majority of the board then in office shall constitute a quorum for the transaction of business at any meeting except when otherwise provided by law; but a less number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice.

Section 2.7. Participation by Communications Equipment. Members of the Board may participate in a meeting through use of conference telephone, electronic video screen communication or other communications equipment, so long as all members participating in such meetings can communicate with all of the other members concurrently and are provided the means of participating in all matters before the Board, and the Association confirms that the person communicating by telephone, electronic video screen or other communications equipment is a director entitled to participate in the Board meeting and that all statements, actions and votes were made by such director. Such participation constitutes presence in person at such meeting.

Section 2.8. Action Without A Meeting. Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board eligible to vote shall individually or collectively consent to such action. The written consent or consents shall be filed

with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same effect as a unanimous vote of directors.

Section 2.9. Vacancies. The directors shall hold office for one year or until their successors are elected and have qualified. Any vacancies occurring in the membership of the board shall be filled by appointment for the unexpired term by the remaining members of the board, though less than a quorum, in accordance with the laws of the United States.

ARTICLE III  
Committees of the Board

Section 3.1. Executive Committee. There shall be an executive committee composed of the chairman of the board, the president, the deputy chairman and not less than four (4) other directors who shall be appointed by the board to serve during its pleasure. Subject at all times to the control of the board, the committee shall have and may exercise all the powers of the board, except powers to amend the Articles of Association, to adopt an agreement of merger or consolidation, to recommend to the shareholders the sale, lease or exchange of all or substantially all of the Association's property and assets, to recommend to the shareholders a dissolution of the Association or a revocation of a dissolution, to amend the bylaws of the Association, to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger. The chairman of the committee may from time to time designate directors to act as alternate members of the committee in the place of any members absent from a meeting thereof. The committee shall meet at such times as it or the board may designate and shall make its own rules of procedure. A majority of its members shall constitute a quorum. The affirmative vote of the majority of its members shall be necessary for the adoption of any resolution. The committee shall keep minutes of its meetings and such minutes shall be submitted to the next regular meeting of the board at which a quorum is present, and any action taken by the board with respect thereto shall be entered into the minutes of the board.

Section 3.2. Other Committees. The Board of Directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees from time to time, each consisting of two or more directors to serve at the pleasure of the Board. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members present constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors shall have all the authority of the

Board, except powers to amend the Articles of Association, to adopt an agreement of merger or consolidation, to recommend to the shareholders the sale, lease or exchange of all or substantially all of the Association's property and assets, to recommend to the shareholders a dissolution of the Association or a revocation of a dissolution, to amend the bylaws of the Association, to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger.

ARTICLE IV  
Officers

Section 4.1. Officers. The officers of this Association shall be a Chairman of the Board, a President and Chief Executive Officer, a Deputy Chairman, one or more Vice Chairman of the Board, a Chief Financial Officer, a Chief Credit Officer, a Chief Risk Officer, a Chief Auditor, a Chief Credit Examiner, a Chief Compliance Officer, one or more Senior Executive Vice Presidents, one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more Vice Presidents, one or more Assistant Vice Presidents, a Secretary, one or more Assistant Secretaries, one or more Trust Officers, one or more Assistant Trust Officers, a Manager and one or more Assistant Managers for each of the branches of this Association, and such other officers as may be required from time to time for the prompt and orderly transaction of its business, to be elected or appointed by the Board; provided, however, that the Board may assign by resolution the authority to appoint, define duties, reassign and dismiss such officers as it shall from time to time determine. Such officers shall respectively exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon, or designated to, them by the Board or other officers to whom such authority has been delegated and assigned.

Section 4.2. Certain Officers to be Directors. The chairman of the board, the president, the deputy chairman of the board and the vice chairmen of the board of the Association shall be members of the board.

Section 4.3. Chairman, President, Deputy Chairman and Vice Chairmen. The chairman of the board shall preside at all shareholders' meetings and all meetings of the board unless he delegates this duty to the President or Deputy Chairman. In the absence or disability of the chairman of the board, the following shall perform the duties and have the powers of the chairman of the board in the order set forth:

President and Chief Executive Officer  
Deputy Chairman  
Vice Chairmen in the order designated by the Board.



Section 4.4. President and Chief Executive Officer. The president shall have general and active management of the business of the Association, and shall have and may exercise any and all other powers and duties pertaining by law, regulation, or practice, to the office of president or prescribed by these bylaws. The president shall be the chief executive officer.

Section 4.5. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Association and shall perform the duties imposed upon him by these Bylaws or the Board of Directors.

Section 4.6. Tenure. The chairman of the board, the president, the deputy chairman of the board and the vice chairmen of the board shall hold their offices for the current year for which the board, of which they are members, was elected and qualified, unless they shall resign, become disqualified or be removed. Any vacancy occurring in any of such offices shall be filled by appointment by the remaining members of the board, though not a quorum. All other officers shall be elected to hold their offices respectively during the pleasure of the board; provided, however, that the board may assign by resolution the dismissing of such officers as it shall from time to time determine.

Section 4.7. Secretary. The secretary shall keep a record of all votes, meetings and proceedings of the board and of the shareholders and of all other matters required to be placed in the minute book, shall enter all bylaws and all amendments thereto and note all changes or repeals thereof in the book of bylaws, shall have charge of the corporate seal of this Association and affix the same to all certificates of stock and as directed by the board, and shall care for and preserve all papers, documents and books placed in his custody. The secretary shall have the power to take any action and execute any document required by law to be taken or executed by a cashier. Duplicates of the corporate seal of this Association shall be placed in the charge of such managers and assistant managers of branches of this Association as are designated by the Secretary; and any one of the managers or assistant managers so designated may affix the corporate seal to documents or papers requiring the same. The assistant secretaries shall have all the powers, and, in the absence of the secretary, duties of the secretary.

ARTICLE V  
Emergency Provisions

Section 5.1. Emergency Defined. "Emergency" as used in this Article VI means disorder, disturbance or damage caused by disaster, war, enemy attack or other warlike acts which prevent conduct and management of the affairs and business of the Association by the Board of Directors and officers. The powers and duties conferred and imposed by this Article and any resolutions adopted pursuant hereto shall be effective only during an emergency. This

Article may be implemented from time to time by resolutions adopted by the Board of Directors before or during an emergency, or during an emergency by the Executive Committee of the Board of Directors constituted and then acting pursuant thereto. During an emergency, the provisions of this Article and any implementing resolutions shall supercede any conflicting provision of any Article of these Bylaws or resolutions adopted pursuant thereto.

Section 5.2. Alternate Locations. During an emergency, the business ordinarily conducted at the principal executive office of the Association shall, if so permitted by applicable statutes or regulations, be relocated elsewhere in suitable quarters, as may be designated by the board of directors or by the Executive Committee of the Board of Directors or by such persons as are then, in accordance with these bylaws or resolutions adopted from time to time by the board of directors, dealing with the exercise of authority in a time of such emergency, conducting the affairs of this Association. Any temporarily relocated place of business of this Association shall be returned to its legally authorized location as soon as practicable and such temporary place of business shall then be discontinued.

Section 5.3. Alternate Management.

(a) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs of business of this Association by its directors and officers as contemplated by these bylaws, any available members of the then incumbent Executive Committee of the Board shall constitute an Interim Executive Committee for the full conduct and management of the affairs and business of the Association.

(b) If as a result of a state of disaster as described under 5.3(a) above, the chief executive officer is unable or unavailable to act, then until such chief executive officer becomes able and available to act or a new chief executive officer is appointed or elected, the senior surviving officer who is able and available to act shall act as the chief executive officer of this Association. If a person in good faith assumes the powers of the chief executive officer pursuant to these provisions in the belief he is the senior surviving officer and the office of the chief executive officer is vacant, the acts of such a person shall be valid and binding although it may subsequently develop that he was not in fact the senior surviving officer or that the office was not in fact vacant.

(c) No officer, director or employee acting in accordance with these Emergency Provisions shall be liable except for willful misconduct.

ARTICLE VI  
Certificates and Transfer of Stock

Section 6.1. Stock Certificates. Certificates of stock in the form adopted by the board shall be issued to the shareholders of this Association according to the number of shares belonging to each respectively. Such certificates shall be transferable by endorsement and delivery thereof, but the transfer shall not be complete and binding on this Association until recorded upon the books of the Association, or its transfer agent, if any.

All certificates of stock shall bear the corporate seal of this Association which may be in the form of a facsimile of such seal imprinted or otherwise reproduced thereon and shall be signed by the chairman of the board or the deputy chairman of the board and the secretary, or an assistant secretary, provided that such signatures upon the certificates may be but need not be facsimiles of the signatures of said officers imprinted or otherwise reproduced upon the certificates.

All certificates of stock which have been transferred as aforesaid shall be properly canceled and preserved.

Section 6.2. Transfer of Stock. No new certificate shall be issued in lieu of an old one unless the latter is surrendered and canceled at the same time. If, however, a certificate be lost or destroyed the board may order a new certificate issued upon such terms, conditions and guaranties as the board may see fit to impose.

Section 6.3. Fractional Shares. The Association shall not be obliged to issue any certificates of stock evidencing, either singly or with other shares, any fractional part of a share, or any undivided interests in shares, but it may do so if the board shall so resolve.

Section 6.4. Ownership. The person, firm or corporation in whose name shares of stock stand on the books of the Association, whether individually or as trustee, pledgee or otherwise, may be recognized and treated by the Association as the absolute owner of the shares, and the Association shall in no event be obligated to deal with or to recognize the rights or interests of other persons in such shares, or in any part thereof.

Section 6.5. Fixing Record Date. The board may by resolution fix a record date for determining the shareholders entitled to notice of and to vote at any meeting of shareholders, which date shall be in reasonable proximity to the date of giving notice to the shareholders of such meeting.

ARTICLE VII  
Records

Section 7.1. The organization papers of this Association, the proceedings of all regular and special meetings of the board and of the shareholders and reports of the committees of

directors shall be recorded in the minute book; and the minutes of each meeting shall be signed by the secretary and attested by the presiding officer.

Section 7.2. Books and records of account and minutes of the proceedings of the shareholders, Board and committees of the Board and a record of the shareholders, giving the names and address of all shareholders and the number of shares held by each, shall be kept at the Head Office or at the office of the Association's transfer agent and shall be open to inspection upon the written demand on the Association of any shareholder at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a shareholder.

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Association and its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and make extracts.

ARTICLE VIII  
Corporate Seal

Section 8.1. The Association shall have a corporate seal upon which shall be inscribed:

UNION BANK, NATIONAL ASSOCIATION  
Incorporated 1864

ARTICLE IX  
Bylaws

Section 9.1. Bylaw Amendments. These Bylaws may be amended, changed, or repealed by a majority of the directors acting at any meeting of the board regularly called and held.

ARTICLE X  
Governance

Section 10.1. Governance. To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, this Association will follow the corporate governance procedures of the Delaware General Corporation Law, Del. Code Ann. tit.8 (1991, as amended 1994, and as amended thereafter).

EXHIBIT 6  
CONSENT OF THE TRUSTEE  
REQUIRED BY SECTION 321(b) OF THE ACT

April 1, 2008

Securities and Exchange Commission  
Washington, D.C. 20549

Ladies and Gentlemen:

In connection with the qualification of an indenture for senior indebtedness between Alpha Natural Resources, Inc. (the "Company") and Union Bank of California, N.A. (the "Trustee"), the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that reports of examinations of the undersigned by federal, state, territorial, or district authorities authorized to make such examinations may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Sincerely,

Union Bank of California, N.A.

By: /s/ Hugo Gindraux  
Corporate Trust Vice President

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Consolidated Report of Condition of  
Union Bank, National Association

of San Francisco in the State of California, at the close of business December 31, 2008, published in response to call made by the Comptroller of the Currency, under Title 12, United States Code, Section 161. Charter 21541

BALANCE SHEET

	Dollar Amounts In Thousands
<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Non-interest-bearing balances and currency and coin	\$ 1,568,573
Interest-bearing balances	2,872,698
Securities:	
Held-to-maturity securities	0
Available-for-sale securities	8,183,431
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices`	23,000
Securities purchased under agreements to resell	40,069
Loans and lease financing receivables:	
Loans and leases held for sale	22,381
Loans and leases, net of unearned income	49,139,282
LESS: Allowance for loan and lease losses	724,654
Loans and leases, net of unearned income and allowance	48,414,628
Trading assets	
Premises and fixed assets	1,268,629
Other real estate owned	680,004
Investments in unconsolidated subsidiaries and associated companies	20,214
Intangible assets:	0
Goodwill	2,369,326
Other intangible assets	713,893
Other assets	3,559,759
<b>Total assets</b>	<b><u>69,736,605</u></b>

Dollar Amounts  
In Thousands

LIABILITIES	
Deposits:	
In domestic offices	44,059,954
Noninterest-bearing	13,568,866
Interest-bearing	30,491,088
In foreign offices, Edge and Agreement subsidiaries, and IBFs	3,331,346
Noninterest-bearing	0
Interest-bearing	3,331,346
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	112,684
Securities sold under agreements to repurchase	60,074
Trading liabilities	
Other borrowed money	1,087,311
Subordinated notes and debentures	11,222,597
Subordinated notes payable to unconsolidated trusts issuing trust preferred securities, and trust preferred securities issued by consolidated special purpose entities	810,558
Other liabilities	1,664,375
Total liabilities	62,348,899
Minority interest in consolidated subsidiaries	0
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	604,577
Surplus	4,795,417
Retained earnings	2,799,463
Accumulated other comprehensive income	-811,751
Other equity capital components	0
Total equity capital	7,387,706
Total liabilities, minority interest, and equity capital	69,736,605