

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

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

FINWISE BANCORP
(Exact Name of Registrant as Specified in Its Charter)

Utah
(State or Other Jurisdiction of
Incorporation or Organization)

83-0356689
(I.R.S. Employer
Identification Number)

756 East Winchester, Suite 100
Murray, Utah 84107
(801) 501-7200

(Address, Including ZIP code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Kent Landvatter
Chairman and Chief Executive Officer
FinWise Bancorp
756 East Winchester, Suite 100
Murray, Utah 84107
(801) 501-7200

(Name, Address, Including ZIP Code, and Telephone Number, Including Area Code, of Agent For Service)

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

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

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period to comply with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

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

Subject to Completion, dated November 18, 2025

PROSPECTUS

\$150,000,000

FINWISE BANCORP

**Common Stock
Preferred Stock
Debt Securities
Depository Shares
Warrants
Units
Subscription Rights**

We may offer and sell the securities identified above from time to time, in one or more transactions. We may also issue common stock, preferred stock, debt securities or depository shares upon the conversion, exchange or exercise of certain of the securities identified above. This prospectus provides you with a general description of these securities. Each time we offer any securities pursuant to this prospectus, we will provide you with a prospectus supplement describing the specific terms of the securities being offered, including the price of the securities. The prospectus supplements and any related free writing prospectus also may add, update or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, together with the documents incorporated by reference in this prospectus and any prospectus supplement, before you decide to invest in any of our securities. This prospectus may not be used to sell securities unless it is accompanied by a prospectus supplement that further describes the securities being offered and sold to you.

We may offer and sell these securities to or through one or more agents, dealers or underwriters as designated by us from time to time, or directly to purchasers or through a combination of these methods, on a continuous or delayed basis. If any agents, dealers or underwriters are involved in the offer and sale of any securities, the applicable prospectus supplement will set forth their names and any applicable purchase price, fee, commission or discount arrangement with, between or among them, or such amount will be calculable from the information set forth therein. For additional information, see "Plan of Distribution." No securities may be sold without delivery of this prospectus and a prospectus supplement describing the method and terms of the offering of those securities.

Our common stock is listed on the NASDAQ Stock Market LLC under the symbol "FINW." If we decide to list or seek a quotation for any other securities, the prospectus supplement relating to those securities will disclose the exchange or market on which those securities will be listed or quoted. On November 17, 2025 the last reported sale price of our common stock on the NASDAQ Stock Market LLC was \$17.99.

Unless otherwise indicated in the applicable prospectus supplement, the other securities offered hereby will not be listed on a national securities exchange. Our principal executive offices are located at 756 East Winchester St. Suite 100, Murray, UT 84107. Our telephone number is (801) 501-7200.

These securities are not savings accounts, deposits or other obligations of our bank or non-bank subsidiaries and are not insured or guaranteed by the Federal Deposit Insurance Corporation, or the FDIC, or any other government agency.

Investing in our securities involves risks. See "[Risk Factors](#)" beginning on page 7 of this prospectus, as well as those risk factors contained in any prospectus supplement we file and in our reports filed with the Securities and Exchange Commission, or the SEC, that are incorporated or deemed to be incorporated by reference herein or in any applicable prospectus supplement, to read about other risk factors you should consider before making a decision to invest in any of our securities.

None of the SEC, any state securities commission, the Board of Governors of the Federal Reserve System, or the Federal Reserve, the FDIC or any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2025

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the SEC under the Securities Act of 1933, as amended, or the Securities Act, using a “shelf” registration process. Under this shelf registration statement, we are registering an unspecified amount of each class of the securities described in this prospectus, and may sell any combination of these securities in one or more offerings from time to time in the future, up to an aggregate offering amount of \$150,000,000. This prospectus provides you with a general description of the securities we may offer and sell and is not meant to provide a complete description of each security. As a result, each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of the offering, including specific amounts, prices and other terms of the securities being offered and other details related to the offering. The prospectus supplement may also add, update or change information contained in this prospectus. Such information may be further updated by documents incorporated by reference into this prospectus or a prospectus supplement. Any statement contained in this prospectus, any prospectus supplement or in a document incorporated or deemed to be incorporated by reference herein or therein shall be deemed to be modified or superseded for purposes of this prospectus and any prospectus supplement to the extent that a statement contained in any subsequently filed document which is or is deemed to be incorporated by reference herein or therein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus or any prospectus supplement. You should read both this prospectus and any prospectus supplement together with the additional information described under the headings “Incorporation of Certain Documents by Reference” and “Where You Can Find More Information” before making an investment decision.

We may sell the securities to or through brokers, dealers or underwriters, directly to purchasers, through agents, in “at the market” offerings or otherwise through a combination of any of these methods of sale. We and our agents reserve the sole right to accept or reject in whole or in part any proposed purchase of the securities. The prospectus supplement, which we will provide each time we offer the securities, will set forth the names of any brokers, dealers, underwriters or agents involved in the sale of the securities, and any related fee, commission or discount arrangements. See “Plan of Distribution.”

This prospectus and any prospectus supplement do not contain all of the information set forth or incorporated by reference in the registration statement or the exhibits filed therewith. Statements contained or incorporated by reference in this prospectus and any applicable prospectus supplement as to the contents of any agreement or other document are only summaries, are not necessarily complete, and in each instance we refer you to the copy of the contract or other document filed as an exhibit to a document incorporated by reference in this prospectus or such prospectus supplement, as applicable, each such statement being qualified in all respects by such reference.

You should rely only on the information contained or incorporated by reference in this prospectus or any applicable prospectus supplement. We have not authorized any person to provide you with any information or to make any representation other than those contained or incorporated by reference in this prospectus or any applicable prospectus supplement, and, if made, such information or representation must not be relied upon as having been given or authorized. Neither this prospectus nor any prospectus supplement constitutes an offer to sell or a solicitation of an offer to buy any security other than the securities offered by this prospectus or any such prospectus supplement, or an offer to sell or a solicitation of an offer to buy any securities by anyone in any jurisdiction in which the offer or solicitation is not authorized or is unlawful. The delivery of this prospectus or any prospectus supplement will not, under any circumstances, create any implication that the information herein or therein is correct as of any time subsequent to the date of this prospectus or such prospectus supplement. You should assume that the information contained or incorporated by reference in this prospectus, any prospectus supplement or other offering materials is accurate only as of the dates of those documents or the documents incorporated by reference, as applicable. Our business, financial condition, results of operations and prospects may have changed since those dates. Any information disclosed in our subsequent filings with the SEC and any applicable prospectus supplement that is inconsistent with the information included in this prospectus will supersede the information in this prospectus or any earlier prospectus supplement.

We have not taken any action to permit a public offering of the securities offered by this prospectus or any prospectus supplement outside the United States or to permit the possession or distribution of this prospectus outside the United States, unless the applicable prospectus supplement so specifies. Persons outside the United States who come into possession of this prospectus or any prospectus supplement must inform themselves about and observe any restrictions relating to the offering of the securities and the distribution of this prospectus or such prospectus supplement outside of the United States.

All references in this prospectus and any prospectus supplement to “we,” “our,” “us,” “the Company” and “FinWise Bancorp” refer to FinWise Bancorp and its wholly owned subsidiaries, including FinWise Bank (which we sometimes refer to as “FinWise Bank,” “FinWise,” “the Bank” or “our Bank,”) and FinWise Investment, LLC.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement and the documents incorporated by reference herein and therein contain forward-looking information within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements are statements other than statements of fact and typically relate to future events or future predictions, including events or predictions relating to future financial performance, and are generally identifiable by the use of forward-looking terminology such as “believe,” “expect,” “may,” “will,” “should,” “plan,” “intend,” or “anticipate” or the negative thereof or comparable terminology. Forward-looking statements reflect numerous assumptions, estimates and forecasts as to future events. No assurance can be given that the assumptions, estimates and forecasts underlying such forward-looking statements will accurately reflect future conditions, or that any guidance, goals, targets or projected results will be realized. The assumptions, estimates and forecasts underlying such forward-looking statements involve judgments with respect to, among other things, future economic, competitive, regulatory and financial market conditions and future business decisions, which may not be realized and which are inherently subject to significant business, economic, competitive and regulatory uncertainties and known and unknown risks, including the risks described under “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2024 and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2025, June 30, 2025 and September 30, 2025, as such factors may be updated from time to time in our filings with the SEC. Our actual results may differ materially from those reflected in the forward-looking statements.

In addition to the risks described under “Risk Factors” in this prospectus and the documents incorporated by reference herein, other important factors to consider and evaluate with respect to such forward-looking statements include:

- the success of the financial technology and banking-as-a-service (“BaaS”) industries, as well as the continued evolution of the regulation of these industries;
- the ability of our Fintech Banking and Payment Solutions service providers to comply with regulatory regimes, and our ability to adequately oversee and monitor our Fintech Banking and Payment Solutions service providers;
- our ability to maintain and grow our relationships with our service providers;
- changes in the laws, rules, regulations, interpretations or policies relating to financial institutions, accounting, tax, trade, tariffs, monetary and fiscal matters, including the application of interest rate caps or maximums;
- our ability to keep pace with rapid technological changes in the industry or implement new technology effectively;
- system failure or cybersecurity breaches of our network security;
- potential exposure to fraud, negligence, computer theft and cyber-crime and other disruptions in our computer systems relating to our development and use of new technology platforms;
- our reliance on third-party service providers for core systems support, informational website hosting, internet services, online account opening and other processing services;
- general economic, political and business conditions, either nationally or in our market areas;
- increased national or regional competition in the financial services industry;
- our ability to measure and manage our credit risk effectively and the potential deterioration of the business and economic conditions in our primary market areas;
- the adequacy of our risk management framework;
- the adequacy of our allowance for credit losses;

- the financial soundness of other financial institutions;
- changes in Small Business Administration (“SBA”) rules, regulations and loan products, including specifically the Section 7(a) program, or changes to the status of the Bank as an SBA Preferred Lender;
- changes in the existing regulatory framework for brokered deposits and potential reclassification of certain BaaS deposits as brokered deposits;
- the value of collateral securing our loans;
- our levels of nonperforming assets;
- losses from loan defaults;
- our ability to protect our intellectual property and the risks we face with respect to claims and litigation initiated against us;
- our ability to implement our growth strategy;
- our ability to continue to launch new products or services successfully;
- the concentration of our lending and depositor relationships through Strategic Programs in the financial technology industry generally;
- interest rate, volatility and liquidity risks;
- the effectiveness of our internal control over financial reporting and our ability to remediate any future material weakness in our internal control over financial reporting;
- dependence on our management team and changes in management composition;
- the sufficiency of our capital;
- compliance with laws and regulations, supervisory actions, the Dodd-Frank Act, capital requirements, the Bank Secrecy Act, and other anti-money laundering laws, predatory lending laws, and other statutes and regulations;
- our ability to maintain a strong core deposit base or other low-cost funding sources;
- results of examinations of us by our regulators;
- our involvement from time to time in legal proceedings;
- natural disasters and adverse weather, acts of terrorism, pandemics, an outbreak of hostilities or other international or domestic calamities, and other matters beyond our control;
- future equity and debt issuances;
- that the anticipated benefits new lines of business that we may enter or investments or acquisitions we may make are not realized within the expected time frame or at all as a result of such things as the strength or weakness of the economy and competitive factors in the areas where we and such other businesses operate;
- the desired effects of implementing segment reporting in the presentation of our financial results in our periodic reports;
- further negative ratings outlooks or downgrades of the U.S.’s long-term credit rating;
- changes in legislative, regulatory or tax priorities;
- reductions in staffing at U.S. governmental agencies; and
- potential government shutdowns or political impasses, including with respect to the U.S. debt ceiling and federal budget.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this prospectus and in the documents incorporated by reference, including those discussed in the section entitled "Risk Factors" herein and in any prospectus supplement. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from our forward-looking statements. Accordingly, you should not place undue reliance on any such forward-looking statements. Any forward-looking statements are based on information available to us as of the filing date of this prospectus, and we do not undertake any obligation to publicly update or review any forward-looking statement, whether because of new information, future developments or otherwise, except as required by law. New risks and uncertainties may emerge from time to time, and it is not possible for us to predict their occurrence. In addition, we cannot assess the impact of each risk and uncertainty on our business or the extent to which any risk or uncertainty, or combination of risks and uncertainties, may cause actual results to differ materially from those contained in any forward-looking statements.

FINWISE BANCORP

We are FinWise Bancorp, a Utah bank holding company headquartered in Murray, Utah. We operate through our wholly-owned subsidiary, FinWise Bank, a Utah state-chartered bank. We currently operate one full-service banking location in Sandy, Utah. We are a nationwide lender to consumers and small businesses. We believe that traditional barriers to servicing banking customers have been substantially lowered due to technological advances in the distribution and management of banking products and services. We seek to capitalize on these advances by leveraging strategic relationships, as well as proprietary loan origination systems and data analytics technology, to expand our reach in marketing channels utilized and credit products offered. As a technology-focused bank, we have utilized technology-oriented loan origination platforms in our Strategic Programs, SBA lending, Residential & Owner Occupied Commercial Real Estate, and Equipment Financing business lines. We have also deployed our own in-house technology to deliver loan and deposit solutions to our customers directly and through third parties.

The Company was formed in 2002 and acquired 100% of the stock of Utah Community Bank, a local community bank founded in 1999 focusing on real estate lending in and around the Salt Lake City, Utah MSA. While the Bank is our primary asset we also have a 20% membership interest in Business Funding Group, or BFG, a Connecticut limited liability company, a nationally significant referral source for SBA loans and a legal lending facilitator. We have a right of first refusal to purchase additional interests in BFG from any selling member along with an option to purchase all of the interests from the remaining members through January 1, 2028. See “Our Relationship with Business Funding Group” in our Annual Report on Form 10-K for the year ended December 31, 2024.

We originate, sell or hold loans in four main lending areas: (i) nationwide Strategic Programs, (ii) a multi-state SBA 7(a) lending program, (iii) residential and owner occupied commercial real estate lending and (iv) multi-state equipment financing. We have principally relied on wholesale funding sources (brokered deposits, health savings accounts, and institutional deposits) to fund our lending activities but also have core deposits, and have utilized borrowings when we deem appropriate.

FinWise Bancorp serves as a registered bank holding company with respect to the Bank, subject to regulation and examination by the Utah Department of Financial Institutions and the Federal Reserve. FinWise Bancorp currently does not engage in any material business activity other than those relating to owning all of the capital stock of FinWise Bank.

RISK FACTORS

An investment in our securities involves substantial risks. In consultation with your own advisors, you should carefully consider, among other matters, the risk factors and other information we include or incorporate by reference in this prospectus and any prospectus supplement before deciding whether to invest in our securities. In particular, you should carefully consider, among other things, the factors described under the caption “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2024 and Part II, Item 1A of our Quarterly Reports on Form 10-Q for the quarters ended subsequent to December 31, 2024, as may be updated by our subsequently-filed Quarterly Reports on Form 10-Q and Current Reports on Form 8-K or other filings that we make with the SEC. If any of the risks contained in or incorporated by reference into this prospectus or any prospectus supplement develop into actual events, our business, financial condition, liquidity, results of operations and prospects could be materially and adversely affected, the market price of our securities could decline and you may lose all or part of your investment. Some statements in this prospectus and any prospectus supplement, and in the documents incorporated by reference into this prospectus or any prospectus supplement, including statements relating to the risk factors, constitute forward-looking statements. See the “Cautionary Note Regarding Forward-Looking Statements” sections in this prospectus and any prospectus supplement.

USE OF PROCEEDS

We intend to use the net proceeds from the sales of the securities in the manner and for the purposes that will be set forth in the applicable prospectus supplement, which may include general corporate purposes.

DESCRIPTION OF CAPITAL STOCK

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the common stock that we may offer under this prospectus. The following description provides a summary of the terms of our capital stock, but does not purport to be complete and is subject to and qualified by reference to our Fourth Amended and Restated Articles of Incorporation (our "Articles") and Amended and Restated By-Laws (our "Bylaws"), which have been incorporated by reference in the registration statement of which this prospectus is a part. The description below does not contain all of the information that you might find useful or that might be important to you. You should refer to the provisions of our Articles and Bylaws because they, and not the summaries, define the rights of holders of shares of our common stock. These documents are available as described under the heading "Where You Can Find More Information."

General

We are incorporated in the state of Utah. The rights of our shareholders are generally covered by Utah law and our Articles and Bylaws. The terms of our capital stock are therefore subject to Utah law, including the Utah Revised Business Corporation Act, or URBCA, and the common and constitutional law of Utah.

Our Articles authorize us to issue up to 44,000,000 shares of capital stock, consisting of (i) 40,000,000 shares of common stock, par value \$0.001 per share, and (ii) 4,000,000 shares of Preferred Stock, par value \$0.001 per share. The authorized but unissued shares of our capital stock are available for future issuance without shareholder approval, unless otherwise required by applicable law or the rules of any applicable securities exchange. Fully paid shares of capital stock, regardless of class or series, are not liable for any call rights and are nonassessable.

Common Stock

Voting

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of shareholders, except as otherwise required by law. The members of our board of directors are elected by a plurality of the votes cast. Our Articles do not authorize cumulative voting. Unless expressly authorized by the articles of incorporation, Utah law prohibits cumulative voting.

Dividends and Other Distributions

Subject to certain regulatory restrictions discussed in this prospectus, all shares of our common stock are entitled to share equally in dividends from legally available funds, when, as, and if declared by our board of directors. Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, all shares of our common stock would be entitled to share equally in all our remaining assets available for distribution to our shareholders after payment of creditors and subject to any prior distribution rights related to our preferred stock.

The Federal Reserve has established guidelines with respect to the maintenance of appropriate levels of capital by registered bank holding companies such as the Company. Compliance with such standards, as presently in effect, or as they may be amended from time to time, could possibly limit the amount of dividends that we may pay in the future. In 1985, the Federal Reserve issued a policy statement on the payment of cash dividends by bank holding companies. In the statement, the Federal Reserve expressed its view that a holding company experiencing earnings weaknesses should not pay cash dividends exceeding its net income, or which could only be funded in ways that weaken the holding company's financial health, such as by borrowing. Our ability to pay dividends and make other distributions to our shareholders depends in part upon the receipt of dividends from the Bank and is limited by federal law. FinWise Bank is a legal entity separate and distinct from

the Company. As a depository institution, the deposits of the Bank are insured by the Federal Deposit Insurance Corporation, or FDIC, as provided by law. Under certain circumstances the FDIC, which is the Bank's primary federal regulator, may determine that the payment of dividends or other distributions by a bank would be an unsafe or unsound practice and to prohibit that payment. The Federal Deposit Insurance Act, or the FDIA, and the FDIC regulations generally allow a bank to pay dividends on common stock only out of net income for the calendar year to date and retained earnings from the prior two calendar years. Additionally, the FDIA generally prohibits an insured depository institution from making any capital distribution (including payment of a dividend) or paying any management fee to its parent holding company if the depository institution would thereafter be undercapitalized.

Preemptive Rights

Under Utah law, shareholders do not have a preemptive right to acquire a corporation's unissued shares except to the extent our Articles provide such a right. Our Articles do not grant preemptive rights to our shareholders.

Restrictions on Ownership

The BHC Act generally permits a company to acquire control of the Company with the prior approval of the Federal Reserve. However, any such company is restricted to banking activities, other activities closely related to the banking business as determined by the Federal Reserve and, for some companies, certain other financial activities. The BHC Act defines control in general as ownership of 25% or more of any class of voting securities, the authority to appoint a majority of the board of directors or other exercise of a controlling influence. Federal Reserve regulations provide that ownership of 5% or less of a class of voting securities is not control. Under a rebuttable presumption established by the Federal Reserve, the acquisition of 10% or more of a class of voting stock of a bank holding company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, such as the Company following the offering, would, under the circumstances set forth in the presumption, constitute acquisition of control of the bank holding company.

Preferred Stock

Our Articles authorize, and Utah corporate law permits, our board of directors to create and designate one or more series of preferred stock having such preferences, dividends, voting rights, the relative participating, option or other special rights, if any, of the series, and any qualifications, limitations or restrictions applicable to such rights and other provisions as the board of directors determines in its discretion. Creation and designation of a series of preferred stock can be done without shareholder approval. Any amendment of the Articles, however, must be approved by the Utah Department of Financial Institutions. Creation of a series of preferred stock will require the Articles to be amended and thus requires the approval of the Utah Department of Financial Institutions. The Articles authorize the directors to create one or more classes of preferred stock and to issue up to 4,000,000 shares of preferred stock without shareholder approval.

Our board of directors will fix the rights, preferences, privileges, qualifications and restrictions of the preferred stock of each series that we sell under this prospectus and applicable prospectus supplements in the certificate of designation relating to that series. We will file as an exhibit to the registration statement of which this prospectus is a part or incorporate by reference into the registration statement of which this prospectus is a part the form of any certificate of designation that describes the terms of the series of preferred stock we are offering before the issuance of the related series of preferred stock. This description will include:

- the title and stated value;
- the number of shares we are offering;
- the liquidation preference per share;
- the purchase price per share;

- the dividend rate per share, dividend period and payment dates and method of calculation for dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
- our right, if any, to defer payment of dividends and the maximum length of any such deferral period;
- the procedures for any auction and remarketing, if any;
- the provisions for a sinking fund, if any;
- the provisions for redemption or repurchase, if applicable, and any restrictions on our ability to exercise those redemption and repurchase rights;
- any listing of the preferred stock on any securities exchange or market;
- whether the preferred stock will be convertible into our shares of common stock or other securities of ours, including warrants, and, if applicable, the conversion period, the conversion price, or how it will be calculated, and under what circumstances it may be adjusted;
- whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange period, the exchange price, or how it will be calculated, and under what circumstances it may be adjusted;
- voting rights, if any, of the preferred stock;
- preemptive rights, if any;
- restrictions on transfer, sale or other assignment, if any;
- a discussion of any material or special United States federal income tax considerations applicable to the preferred stock;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs;
- any limitations on issuances of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock being issued as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and
- any other specific terms, rights, preferences, privileges, qualifications or restrictions of the preferred stock.

When we issue shares of preferred stock under this prospectus, the shares will be fully paid and nonassessable and will not have, or be subject to, any preemptive or similar rights.

Amendment of the Articles

Pursuant to Section 16-10a-1003 of the URBCA, unless a different voting standard is required by the articles of incorporation or the board of directors conditions the submission of a proposed amendment to the shareholders, a majority of the votes entitled to be cast is required for shareholder approval of an amendment to the articles of incorporation. Section 7.5 of our Articles requires the affirmative vote of the holders of not less than 80% of the outstanding shares entitled to vote in an election of directors to amend, alter, change or repeal the provisions in our Articles restricting certain of our shareholders from engaging in a business combination with us for a limited period of time.

Business Combinations

Our Articles include provisions regarding “business combinations” between corporations and “interested shareholders.” Our Articles contain provisions which prohibit us from engaging in a business combination with

an interested shareholder for a period of three years after the date of the transaction in which the interested shareholder became a shareholder, unless:

- prior to the date of the transaction that resulted in the shareholder becoming an interested shareholder, our board approved the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of our voting stock (other than certain excluded shares) outstanding at the time the transaction commenced;
- on or subsequent to the date of the transaction that resulted in the shareholder becoming an interested shareholder, the business combination is approved by the board and authorized at an annual or special meeting of shareholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested shareholder; or
- the shareholder is the owner of 15% or more of the outstanding voting stock of the Company at the time of the consummation of this offering.

For purposes of these provisions, a “business combination” includes mergers, consolidations, exchanges, asset sales, leases and other transactions resulting in a financial benefit to the interested shareholder. An “interested shareholder” is defined as any person or entity that beneficially owns 15% or more of our outstanding voting stock and any person or entity affiliated with or controlling or controlled by that person or entity.

Removal of Directors

Our Articles provide that our directors may be removed only for cause and only upon the affirmative vote of at least 66.66% of the outstanding shares of our capital stock entitled to vote for directors. These provisions may discourage, delay or prevent the removal of incumbent directors.

Forum Selection

Our Articles and Bylaws provide that the United States District Court for the District of Utah and any Utah state court sitting in Salt Lake County, Utah are the exclusive forum for (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our shareholders, (3) any action asserting a claim arising pursuant to any provision of the URBCA, our Articles or our Bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine, unless we consent in writing to the selection of an alternative forum. This exclusive forum provision in our Articles and Bylaws is intended to apply to claims arising under Utah state law and would not apply to claims brought pursuant to the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. The exclusive forum provision in our Articles and Bylaws will not relieve us of any of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our shareholders will not be deemed to have waived our compliance with these laws, rules and regulations.

Certain Provisions Potentially Having an Anti-Takeover Effect

Several provisions of our Articles and Bylaws, which are summarized herein, may have anti-takeover effects. These provisions are intended to avoid costly takeover battles, lessen our vulnerability to a hostile change of control and enhance the ability of our board of directors to maximize shareholder value in connection with any unsolicited offer to acquire us. For example, our Articles and Bylaws contain provisions for, among other things, the restriction on business combinations with interested shareholders as discussed above and other provisions such as the staggered election of directors to serve for three-year terms, which may have the effect of discouraging a merger proposal, a take-over attempt or other efforts to gain control of us. The accelerated vesting

of options and other incentive compensation in the event of a change of control may also have the effect of discouraging a merger proposal, a take-over attempt or other efforts to gain control of us. Such anti-takeover provisions, could discourage, delay or prevent (1) the merger or acquisition of our company by means of a tender offer, a proxy contest or otherwise that a shareholder may consider in its best interest and (2) the removal of incumbent officers and directors.

Limited Actions by Shareholders

Our Articles and Bylaws provide that any action required or permitted to be taken by our shareholders must be effected at an annual or special meeting of shareholders or by the unanimous written consent of our shareholders.

Advance Notice Requirements for Shareholder Proposals and Director Nominations

Our Bylaws provide that shareholders seeking to nominate candidates for election as directors or to bring business before an annual meeting of shareholders must provide timely notice of their proposal in writing to the corporate secretary. Generally, to be timely, a shareholder's notice must be received at our principal executive offices not less than 150 days nor more than 180 days before the first anniversary of the preceding year's annual meeting of shareholders. Our Bylaws also specify requirements as to the form and content of a shareholder's notice. These provisions may impede a shareholder's ability to bring matters before an annual meeting of shareholders or make nominations for directors at an annual meeting of shareholders.

Limitation of Liability and Indemnification of Officers and Directors

Pursuant to our Articles and Bylaws, we will, to the fullest extent permitted by the Utah Revised Business Corporation Act, indemnify our directors and officers with respect to expenses, settlements, judgments and fines in suits (including actions brought against a director or officer in the name of the Company, commonly referred to as a derivative action) in which such person was made a party by reason of the fact that he or she is or was a director or officer, or being or having been such a director or officer, of another corporation or entity or benefit plan at our request. However, we are not required, under any circumstances, to provide indemnification or make an indemnification payment prohibited by federal law or applicable banking regulations. Further, no such indemnification payment may be given if the acts or omissions of the director or officer are adjudged to be intentional misconduct or a knowing violation of law, if such director or officer is liable to the Company for an unlawful distribution or if such director or officer received a benefit to which such person was not entitled.

We are also expressly authorized, under our Bylaws to advance certain expenses (including attorneys' fees and disbursements and court costs) to our directors and officers and carry directors' and officers' insurance providing indemnification for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

The limitation of liability and indemnification provisions in our Articles and Bylaws may discourage shareholders from bringing a lawsuit against directors for breach of their fiduciary duties. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our shareholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

NASDAQ Stock Market Listing

Our common stock is listed on the NASDAQ Stock Market LLC under the symbol "FINW."

Transfer Agent

Broadridge Financial Solutions, Inc. serves as the transfer agent and registrar for our common stock.

DESCRIPTION OF DEBT SECURITIES

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. We may offer debt securities which may be senior or subordinated. While the terms summarized below will apply generally to any debt securities that we may offer, we will describe the particular terms of any debt securities we offer in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any debt securities offered under that prospectus supplement may differ from the terms described below. The applicable senior or subordinated indenture, the applicable supplemental indenture and the form of debt security relating to a particular offering of debt securities have been or will be incorporated by reference as exhibits to the registration statement of which this prospectus forms a part. We urge you to read the applicable prospectus supplement and any related free writing prospectus, as well as the applicable indenture and supplemental indenture that contains the specific terms of the debt securities.

We may issue senior debt securities from time to time, in one or more series under a senior indenture that we will enter into with a trustee, which we refer to as the “senior trustee” or in another senior indenture we may enter into in the future with a senior trustee. We may issue subordinated debt securities from time to time, in one or more series under a subordinated indenture that we will enter into with a trustee, which we refer to as the “subordinated trustee” or in another subordinated indenture we may enter into in the future with a subordinated trustee. The form of senior indenture and subordinated indenture are incorporated by reference as exhibits to the registration statement of which this prospectus forms a part. Together, the senior indenture and the subordinated indenture are referred to as the “indentures” and, together, the senior trustee and the subordinated trustee are referred to as the “trustees.” A form of each debt security, any future supplemental indenture or similar document also will be so filed. The indentures are subject to and governed by the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), and may be supplemented or amended from time to time. This prospectus briefly outlines some of the provisions of the indentures. The below summary of the material provisions of the indentures is qualified in its entirety by the provisions of the indentures, including definitions of certain terms used in the indentures. Wherever we refer to particular sections or defined terms of the indentures, those sections or defined terms are incorporated by reference in this prospectus or the applicable prospectus supplement.

The indentures give us broad authority to set the particular terms of each series of debt securities, including the right to modify certain of the terms contained in the indenture. We will describe the specific terms of a series of debt securities and the extent, if any, to which the specific terms of the debt securities modify the terms of the relevant indenture in the prospectus supplement relating to the debt securities.

FinWise Bancorp is a bank holding company and almost all of our operating assets are owned by FinWise Bank. We are a legal entity separate and distinct from FinWise Bank. We rely primarily on dividends from FinWise Bank to meet our obligations. There are regulatory limitations on the payment of dividends directly or indirectly to us from FinWise Bank. Accordingly, our debt securities will be effectively subordinated to all existing and future liabilities of FinWise Bank, and holders of our debt securities should look only to our assets for payments of the debt securities.

As used in this section only, “FinWise Bancorp,” “FinWise,” the “Company,” “we,” “our” or “us” refer to FinWise Bancorp, excluding our subsidiaries, including FinWise Bank, unless expressly stated or the context otherwise requires.

General

The indentures do not limit the aggregate principal amount of debt securities that we may issue and provide that we may issue debt securities under the indentures from time to time in one or more series. We may from time to time, without giving notice to or seeking the consent of the holders of the debt securities of any series, issue debt securities having the same ranking and the same terms (other than the public offering price, issue date,

payment of interest accruing prior to the issue date and, under some circumstances, the first interest payment date) as the debt securities of a previously issued series. Any additional debt securities having such identical terms, together with the debt securities of the applicable series previously issued, will constitute a single series of debt securities under the applicable indenture.

Unless otherwise provided in a prospectus supplement, the senior debt securities we issue will be our unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding. The subordinated debt securities we issue will be our unsecured obligations and will be subordinated in right of payment to the prior payment in full of all of our senior indebtedness, which term includes senior debt securities, as described below under “— Subordination.” In certain events of insolvency, the subordinated debt securities will also be subordinated to certain other financial obligations, as described below under “— Subordination.”

You should read the applicable prospectus supplement relating to the particular debt securities being offered and issued for specific terms, including, where applicable:

- the title and type of the debt securities;
- the aggregate principal amount of the debt securities being offered, the aggregate principal amount of the debt securities outstanding as of the most recent practicable date and any limit on their aggregate principal amount, including the aggregate principal amount of debt securities authorized;
- the price at which the debt securities will be issued, which may be expressed as a percentage of the principal;
- the date or dates, or the method for determining the date or dates, on which the principal of the debt securities will be payable;
- the interest rates, if any, which rate may be zero if the debt securities are issued at a discount from the principal amount payable at maturity, or the method by which the interest rates will be determined, including, if applicable, any remarketing option or similar method;
- the date or dates from which interest, if any, will accrue or the method by which the date or dates will be determined;
- the interest payment dates and the record dates for interest payment dates, or the method by which such dates will be determined;
- the persons to whom interest will be payable;
- the place or places where the principal of, and any premium or interest on, the debt securities will be payable, where any debt securities may be surrendered for registration of transfer or exchange, and where any debt securities may be surrendered for conversion or exchange;
- where notices or demands to or upon us in respect of the debt securities and the applicable indenture may be served;
- whether any of the debt securities are to be redeemable at our option and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which they may be redeemed, in whole or in part;
- whether we will be obligated to redeem or purchase any of the debt securities pursuant to any sinking fund or analogous provision or at the holder’s option, and, if so, the dates or prices and the other terms on which the debt securities must be redeemed or purchased pursuant to this obligation and any provisions for the remarketing of the debt securities so redeemed or purchased;
- whether the debt securities will be convertible into our common or preferred stock and/or exchangeable for other securities of ours and, if so, the terms and conditions upon which the debt securities will be convertible or exchangeable;

- if other than U.S. dollars, the currency of payment in which the principal of, and any premium or interest on, the debt securities will be paid;
- if other than the principal amount, the portion of the principal amount, or the method by which the portion will be determined, of the debt securities that will be payable upon declaration of acceleration of the maturity of the debt securities;
- whether the principal of, and any premium or interest on, the debt securities will be payable, at our or the holder's election, in a currency other than that in which the debt securities are stated to be payable, and the dates and the other terms upon which this election may be made;
- any index, formula or other method used to determine the amount of principal of, and any premium or interest on, the debt securities;
- whether the debt securities are to be issued in the form of one or more global securities and, if so, the identity of the depositary for the global security or securities;
- whether the debt securities are senior or subordinated and, if subordinated, the applicable subordination provisions;
- in the case of subordinated debt securities, the relative degree, if any, to which the subordinated debt securities will be senior to or be subordinated to other series of subordinated debt securities or other indebtedness of ours in right of payment, whether the other series of subordinated debt securities or other indebtedness is outstanding or not;
- any provisions relating to any security provided for the debt securities;
- whether the debt securities will be guaranteed as to payment or performance;
- any addition to, deletion of or change in the "events of default" described in this prospectus or in the indentures with respect to the debt securities and any change in the acceleration provisions described in this prospectus or in the applicable indenture with respect to the debt securities;
- any addition to, deletion of or change in the covenants described in this prospectus or in the applicable indenture with respect to the debt securities;
- the applicability, if any, of the defeasance and covenant defeasance provisions described in this prospectus or in the applicable indenture;
- whether any of the debt securities are to be issued upon the exercise of warrants and the time, manner and place for the debt securities to be authenticated and delivered;
- whether and under what circumstances we will pay any additional amounts on the debt securities in respect of any tax, assessment or governmental charge;
- the name of the applicable trustee and the nature of any material relationship with us or any of our affiliates, and the percentage of debt securities of the class necessary to require the trustee to take action;
- the names of any depositaries, security registrars, interest rate calculation agents, exchange rate calculation agents or other agents with respect to the debt securities; and
- any other terms of the debt securities, which may supplement, modify or delete any provision of the applicable indenture as it applies to that series, including any terms that may be required under applicable law or regulations or advisable in connection with the offer and sale of the securities.

Some of our debt securities may be issued as "original issue discount" securities. Original issue discount securities bear no interest or bear interest at below-market rates and will be sold at a discount below their stated principal amount. The prospectus supplement will also contain any special tax, accounting or other information relating to original issue discount securities or relating to certain other kinds of securities that may be offered, including securities linked to an index.

Acceleration of Maturity

If an event of default with respect to any outstanding series of debt securities occurs and is continuing, the indenture trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series may declare the principal amount due and payable immediately by providing written notice of such acceleration to us, and, if notice is given by the holders instead of the indenture trustee, to the indenture trustee. Subject to certain conditions, the declaration of acceleration may be rescinded, and past defaults (except uncured payment defaults) may be waived, by the holders of not less than a majority of the principal amount of debt securities of that series. The prospectus supplement relating to each series of debt securities will provide additional disclosure of the particular provisions relating to acceleration of maturity upon the occurrence and continuation of an event of default.

Denominations; Transfer

Unless otherwise indicated in the applicable prospectus supplement, the debt securities we are offering will be issued in denominations of \$1,000 and increments of \$1,000 in excess thereof, or in such other currencies or denominations as may be set forth in the applicable supplemental indenture or specified in an officer's certificate, if any, relating to such series of debt securities. No service charge will be made for any transfer or exchange of the debt securities, but we may require payment of an amount sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange.

Payment and Paying Agent

The principal of and interest, if any, on any series of debt securities will be payable at the corporate trust office of the indenture trustee, the address of which will be stated in the applicable prospectus supplement. However, at our option, interest payment may be made by check mailed to the address of the person entitled thereto as it appears in the applicable register for such debt securities. We will make payments of principal of, and any interest on, the debt securities represented by any global security registered in the name of and held by a depositary or its nominee, to such depositary or its nominee, as the case may be, as the registered owner and holder of such global security. Neither we, the indenture trustee nor any of its or our respective agents will have any responsibility or liability for any aspect of records relating to, or payments made on account of, beneficial interests in any global security or for maintaining, supervising or reviewing any records of any depositary, its nominee or any participant relating to such beneficial interests.

Conversion and Exchange

The terms, if any, on which debt securities are convertible into or exchangeable for, either mandatorily or at our or the holder's option, property or cash, common stock, preferred stock or other securities of ours, or a combination of any of these, will be set forth in the applicable prospectus supplement.

Global Securities

The debt securities may be issued, in whole or in part, in the form of one or more global securities that will be deposited with, or on behalf of, a depositary identified in the applicable prospectus supplement and registered in the name of the depositary or its nominee. Interests in any global debt security will be shown on, and transfers of the debt securities will be effected only through, records maintained by the depositary and its participants. The specific terms of the depositary arrangement will be described in the applicable prospectus supplement.

Subordination

The subordinated debt securities will be unsecured and will be subordinated in right of payment, to the extent and in the manner set forth below, to the prior payment in full of all of the Company's senior indebtedness, as more fully described in the applicable prospectus supplement.

If any of the following circumstances has occurred, payment in full of all principal, premium, if any, and interest must be made or provided for with respect to all outstanding senior indebtedness before we can make any payment or distribution of principal, premium, if any, or interest on the subordinated debt securities:

- any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise;
- any default with respect to senior indebtedness that permits its holders to accelerate the maturity of the senior indebtedness has occurred and is continuing, and the default is subject to judicial proceedings or the Company has received notice of such default; and;
- with respect to any series of subordinated debt securities, there is no right of acceleration of the payment of principal or interest of a series of subordinated debt securities upon a default in the performance of any covenant or agreement in the subordinated debt securities of a particular series or in the applicable supplemental indenture. Except in the event of a receivership, insolvency, liquidation or similar proceeding, there is no right of acceleration of the payment of principal or interest of a series of subordinated debt securities upon an event of default. In the event of a default in the payment of interest or principal, the holders of senior indebtedness will be entitled to be paid in full before any payment can be made to holders of subordinated debt securities. However, a holder of a subordinated debt security (or the indenture trustee under the applicable supplemental indenture on behalf of all of the holders of the affected series) may, subject to certain limitations and conditions, seek to enforce overdue payments of interest or principal on the subordinated debt securities.

The indentures do not limit the amount of senior indebtedness that we may incur.

Events of Default, Waiver

Under the indentures, unless and to the extent modified by a supplemental indenture, an event of default will occur with respect to the debt securities upon the occurrence of any one of the following events:

- our default in the payment of any interest on the debt securities when due, and continuance of such default for a period of 30 days;
- our default in the payment of any principal on the debt securities when due and payable either at maturity, upon any redemption, upon acceleration of maturity or otherwise;
- failure to deposit any sinking fund payment for a debt security of that series when due;
- our failure to perform any other covenant or agreement contained in the debt securities or in the indenture; and
- certain events in bankruptcy, insolvency or reorganization of us or FinWise Bank.

Supplemental Indentures/Amendments

We and the trustee under the applicable indenture may enter into an indenture supplemental to such indenture, with the consent of the holders of not less than a majority in principal amount of the debt securities then outstanding and affected by such amendment, voting as a single class. However, without the consent of each affected holder of such debt securities, an amendment may not:

- change the stated maturity date of, or any premium or installment of interest on, the debt security;
- reduce the principal amount on, or the rate of interest of any debt security, or reduce the amount of any premium payable upon the redemption of any debt security;

- change the place of payment, currency or currencies in which any debt security or any premium or interest thereon is payable;
- impair the holders' rights to institute suit for the enforcement of any payment on or after the stated maturity date of any debt security or, in the case of redemption, on or after the redemption date;
- reduce the percentage in principal amount of the outstanding debt securities required to consent to any modification, amendment or waiver under the indenture or for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults;
- adversely affect any rights of conversion; or
- reduce the principal amount of original issue discount debt securities that could be declared due and payable upon an acceleration of their maturity.

The holders of a majority in principal amount of the outstanding debt securities of any series may waive compliance by us and the indenture trustee with certain provisions of the indenture. The holders of a majority in principal amount of the outstanding debt securities of any series may waive any past default under the indenture with respect to that series, except a default in the payment of the principal, or any premium or interest payable on a debt security of that series or in respect of a covenant or provision that under the terms of the indenture cannot be modified or amended, without the consent of each affected holder.

We and the trustee under the applicable indenture may enter into one or more indentures supplemental to the applicable indenture, without the consent of any holder of debt securities covered by such indenture, for any of the following purposes:

- to cure any ambiguity, defect or inconsistency in the indenture, provided that such action is not inconsistent with the provisions of that indenture and does not adversely affect the interests of the applicable holders;
- to provide for the assumption of the Company's obligations to holders of such debt securities by a successor to the Company pursuant to the applicable indenture;
- to make any change that would provide any additional rights or benefits to the holders of such debt securities or that does not adversely affect the legal rights under the applicable indenture of any such holder;
- to provide for the issuance of and establish the form and terms and conditions of debt securities of any series as permitted by the applicable indenture;
- to comply with requirements of the SEC in order to effect or maintain the qualification of an indenture under the TIA;
- to conform the text of the applicable indenture or such debt securities to any provision of the description thereof set forth in this prospectus or any related prospectus supplement or term sheet;
- to add any guarantor or to provide any collateral to secure any such debt securities;
- to add additional obligors under the applicable indenture and such debt securities;
- to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the debt securities of one or more series and to add to or change any of the provisions of the applicable indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee; or
- to amend or supplement any provision contained in the indenture or in any supplemental indenture, if the amendment or supplement does not materially adversely affect the interests of the holders of any debt securities then outstanding.

Calculation of Outstanding Debt Securities

To calculate whether the holders of a sufficient principal amount of the outstanding securities have given any request, demand, authorization, direction, notice, consent or waiver under the indenture:

- in the case of original issue discount securities, the principal amount that may be included in the calculation is the amount of principal that would be due and payable upon a declaration of acceleration according to the terms of that original issue discount security as of the date of the calculation; and
- any debt securities owned by us, or owned by any other obligor of the debt securities or any affiliate of ours or of any other obligor, should be disregarded and deemed not to be outstanding for purposes of the calculation

Consolidations, Mergers and Sales of Assets

Unless otherwise limited by the terms of a supplemental indenture, we may consolidate or merge with or into, or transfer our assets substantially as an entirety to, a successor corporation, if the successor corporation is organized under the laws of the U.S., any state thereof or the District of Columbia and such successor corporation assumes our obligations on the debt securities and under the indenture immediately after giving effect to the transaction, and no event of default, and no event that, after notice or lapse of time, would become an event of default, will have occurred and be continuing, and certain other conditions are met.

Additional Provisions

The indenture trustee is not obligated to exercise any of its rights or powers under the indenture at the request, order or direction of any of the holders of the debt securities, unless the holders have offered the indenture trustee satisfactory security or indemnification. The indenture provides that the holders of a majority in principal amount of outstanding debt securities of any series may, in certain circumstances, direct the time, method and place of conducting any proceeding for any remedy available to the indenture trustee, or exercising any trust or other power conferred on the indenture trustee.

No holder of a debt security of any series will have the right to institute any proceeding for any remedy under the indenture, unless:

- the holder has provided the indenture trustee with written notice of one or more events of default regarding the holder's series of debt securities;
- the holders of at least 25% in principal amount of the outstanding debt securities of a series have made a written request to the indenture trustee and offered security and indemnity satisfactory to the indenture trustee against the costs, expenses and liabilities to be incurred in the proceeding;
- the indenture trustee has failed to institute the proceeding within 60 days after its receipt of such notice, request and offer of indemnity; and
- the indenture trustee has not received any direction during such 60-day period inconsistent with such request from the holders of a majority in principal amount of the outstanding debt securities of that series.

However, the holder of any debt security will have an absolute and unconditional right to receive payment of the principal, any premium or any interest in respect of such debt security on or after the date expressed in such debt security and to institute suit for the enforcement of any such payment.

We are required to file annually with the indenture trustee a certificate of no default, or specifying any default that exists.

Governing Law

The indentures and debt securities will be governed by and construed in accordance with the laws of the State of New York.

DESCRIPTION OF DEPOSITARY SHARES

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the depositary shares that we may offer under this prospectus and the related depositary agreements and depositary receipts. While the terms summarized below will apply generally to any depositary shares that we may offer, we will describe the particular terms of any series of depositary shares in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any depositary shares offered under that prospectus supplement may differ from the terms described below. Specific depositary agreements and depositary receipts relating thereto will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement, which includes this prospectus. We urge you to read the applicable prospectus supplement and any related free writing prospectus, as well as the complete depositary agreements and depositary receipts certificates that contain the terms of the depositary shares.

General

We may, at our option, elect to offer and issue fractional shares of preferred stock rather than full shares of preferred stock. In such event, we will issue receipts for depositary shares, called depositary receipts, each of which will represent a fraction of a share of a particular series of preferred stock.

We will deposit the shares of any series of the preferred stock underlying the depositary shares under a separate deposit agreement between us and a bank or trust company selected by us, known as a depositary, having its principal office in the United States, and having a combined capital and surplus of at least \$50 million. The applicable prospectus supplement will provide the name and address of the depositary. Subject to the terms of the deposit agreement, each owner of a depositary share will have a fractional interest in all the rights and preferences of the preferred stock underlying the depositary share. These rights include any dividend, voting, redemption, conversion and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of preferred stock in accordance with the terms of the applicable prospectus supplement and deposit agreement.

While the final depositary receipts are being prepared, we may order the depositary, in writing, to issue temporary depositary receipts substantially identical to the final depositary receipts although not in final form. This will entitle the holders to all the rights relating to the final depositary receipts. Final depositary receipts will be prepared without unreasonable delay, and the holders of the temporary depositary receipts can exchange them for the final depositary receipts at our expense.

Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received for the preferred stock (less any taxes required to be withheld) to the record holders of depositary shares representing the preferred stock in proportion to the number of depositary shares that the holders own on the relevant record date. The depositary will distribute only the amount that can be distributed without attributing to any holder of depositary shares a fraction of one cent. The balance not distributed will be added to and treated as part of the next sum that the depositary receives for distribution to record holders of depositary shares.

If there is a distribution other than in cash, the depositary will distribute property to the record holders of depositary shares that are entitled to it, unless the depositary determines that it is not feasible to make this distribution. If this occurs, the depositary may, with our approval, sell the property and distribute the net proceeds from the sale to the holders of depositary shares.

Redemption of Preferred Stock

If a series of preferred stock represented by depositary shares is to be redeemed, the depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of such series of preferred stock. The depositary shares will be redeemed by the depositary at a price per depositary share equal to the applicable fraction of the redemption price per share payable in respect of the shares of preferred stock so redeemed.

From and after the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders of depositary shares will cease, except the right to receive money or property that the holders of the depositary shares were entitled to receive on redemption. The payments will be made when holders surrender their depositary receipts to the depositary.

Conversion and Exchange

Unless the applicable prospectus supplement indicates otherwise, the series of preferred stock underlying the depositary shares will not be convertible or exchangeable into any other class or series of our capital stock.

Withdrawal of Preferred Stock

If you surrender depositary receipts at the principal corporate trust office of the depositary (unless the related depositary shares have previously been called for redemption), you are entitled to receive at that office, should you so request, the number of shares of preferred stock and any money or other property represented by the depositary shares. We will not issue partial shares of preferred stock. If you deliver a number of depositary receipts evidencing a number of depositary shares that represent more than a whole number of depositary shares of preferred stock to be withdrawn, the depositary will issue you a new depositary receipt evidencing the excess number of depositary shares at the same time that the preferred stock is withdrawn. Holders of preferred stock will no longer be entitled to deposit these shares under the deposit agreement or to receive depositary shares in exchange for those withdrawn shares of preferred stock. We cannot assure you that a market will exist for the withdrawn preferred stock.

Voting Deposited Preferred Stock

Upon receipt of notice of any meeting at which the holders of any series of deposited preferred stock are entitled to vote, the depositary will mail the information contained in such notice of meeting to the record holders of the depositary shares relating to such series of preferred stock. Each record holder of such depositary shares on the record date will be entitled to instruct the depositary to vote the amount of the preferred stock represented by such holder's depositary shares. The depositary will try to vote the amount of such series of preferred stock represented by such depositary shares in accordance with such instructions.

We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. The depositary will not vote any preferred stock if it does not receive specific instructions from the holders of depositary shares relating to the preferred stock.

Amendment and Termination of the Deposit Agreement

Unless otherwise provided in the applicable prospectus supplement or required by law, the form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended at any time by an agreement between us and the depositary. A deposit agreement may be terminated by either the depositary or us only if:

- all outstanding depositary shares have been redeemed;
- each share of preferred stock has been converted into or exchanged for common stock; or

- there has been a final distribution on the preferred stock of the relevant series in connection with our liquidation, dissolution or winding up and the distribution has been distributed to the holders of the related depositary receipts evidencing the depositary shares.

Charges of Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary associated with the initial deposit and any redemption of the preferred stock. Holders of depositary shares will pay transfer and other taxes and governmental charges, and any other charges that are stated to be their responsibility in the deposit agreement.

Resignation and Removal of Depositary

The depositary may resign at any time by delivering notice to us. We also may remove the depositary at any time. Resignations or removals will be effective when a successor depositary is appointed, and when the successor accepts the appointment. A successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal. A successor depositary must be a bank or trust company having its principal office in the United States, and having a combined capital and surplus of at least \$50 million.

Miscellaneous

The depositary will forward all reports and communications from us that are delivered to the depositary and that we are required to furnish to the holders of the deposited preferred stock.

Neither the depositary nor we will be liable if it is prevented or delayed by law or any circumstances beyond its control in performing its obligations under the deposit agreement. Our obligations and the obligations of the depositary under the deposit agreement will be limited to good faith performance of their duties thereunder, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares, depositary receipts or shares of preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants or upon information provided by holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

DESCRIPTION OF WARRANTS

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the warrants that we may offer under this prospectus and the related warrant agreements and warrant certificates. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any warrants offered under that prospectus supplement may differ from the terms described below. Specific warrant agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part. We urge you to read the applicable prospectus supplement and any related free writing prospectus, as well as the complete warrant agreements and warrant certificates that contain the terms of the warrants.

General

We may issue warrants for the purchase of common stock, preferred stock and/or debt securities. Warrants may be issued separately or together with common stock, preferred stock or debt securities offered and issued by any prospectus supplement and may be attached to or separate from such common stock, preferred stock or debt securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust corporation, as warrant agent, all as set forth in the prospectus supplement relating to the particular issue of warrants.

We will describe in the applicable prospectus supplement the terms of the particular warrants being offered and issued and the applicable warrant agreement, including, where applicable:

- the title of the warrants;
- the offering price for the warrants;
- the aggregate number of warrants offered;
- the designation and terms of the common stock, preferred stock or debt securities, if any, purchasable upon exercise of the warrants;
- the designation and terms of the common stock, preferred stock or debt securities, if any, with which the warrants are issued and the number of warrants issued with each of these securities;
- the date after which the warrants and any common stock, preferred stock or debt securities, if any, issued with the warrants will be separately transferable;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at, and currency in which, the principal amount of debt securities may be purchased upon such exercise;
- the dates on which the right to exercise the warrants begins and expires;
- the minimum or maximum amount of the warrants that may be exercised at any one time;
- the periods during which, and places at which, the warrants are exercisable;
- the manner of exercise;
- the currency, currencies or currency units in which the offering price, if any, and the exercise price are payable;

- a discussion of certain United States federal income tax considerations;
- any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;
- any redemption or call provisions applicable to the warrants;
- the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreement and the warrants; and
- any other terms, preferences, rights or limitations of or restrictions on the warrants.

Warrant certificates may be exchanged for new warrant certificates of different denominations, may be presented for registration of transfer, and may be exercised at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of any warrants to purchase common stock or preferred stock, holders of such warrants will not have any rights of holders of the common stock or preferred stock purchasable upon such exercise, including the right to receive payments of dividends, if any, on the common stock or preferred stock purchasable upon such exercise or to exercise any applicable right to vote. Prior to the exercise of any warrant to purchase debt securities, holders of such warrants will not have any of the rights of holders of the debt securities purchasable upon such exercise, including the right to receive payments of principal of, premium, if any, or interest, if any, on the debt securities purchasable upon such exercise or to enforce covenants in the applicable indenture.

Exercise of Warrants

Each warrant will entitle the holder to purchase such shares of common stock or preferred stock or principal amount of debt securities, as the case may be, at such exercise price as shall in each case be set forth in, or calculable from, the prospectus supplement relating to the warrants we propose to offer and issue. After the close of business on the expiration date of the warrants (or such later date to which such expiration date may be extended by us), unexercised warrants will become void.

DESCRIPTION OF UNITS

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the units that we may offer under this prospectus and any related unit agreements that we may enter into. While the terms summarized below will apply generally to any units that we may offer, we will describe the particular terms of any series of units in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any units offered under that prospectus supplement may differ from the terms described below. Specific unit agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement, which includes this prospectus. We urge you to read the applicable prospectus supplement and any related free writing prospectus, as well as the complete unit agreements that contain the terms of the units.

We may issue units comprised of two or more of the other securities described in this prospectus in any combination and in one or more series. We may evidence each series of units by unit certificates that we will issue under a separate agreement. We may enter into unit agreements with a unit agent. Each unit agent will be a bank or trust company that we select. We will indicate the name and address of the unit agent in the applicable prospectus supplement relating to a particular series of units.

We will describe in the applicable prospectus supplement the terms of the particular warrants being offered and issued and the applicable warrant agreement, including, where applicable:

- the title of the series of units;
- the price or prices at which such units will be issued;
- the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units;
- the terms of the unit agreement governing the units;
- a discussion of certain United States federal income tax considerations; and
- any other terms of the units and of the securities comprising the units.

The provisions described in this section, as well as those described under “Description of Capital Stock,” “Description of Debt Securities,” “Description of Depositary Shares,” “Description of Warrants” and “Description of Subscription Rights” will apply to the securities included in each unit, to the extent relevant and as may be updated in any prospectus supplements.

DESCRIPTION OF SUBSCRIPTION RIGHTS

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the subscription rights that we may offer under this prospectus and any related subscription rights agreements that we may enter into. While the terms summarized below will apply generally to any subscription rights that we may offer, we will describe the particular terms of any subscription rights in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any subscription rights offered under that prospectus supplement may differ from the terms described below. We urge you to read the applicable prospectus supplement and any related free writing prospectus, which contain the terms of the subscription rights.

General

We may distribute subscription rights, which may or may not be transferable, to the holders of our common stock or holders of our debt securities as of a record date set by our board of directors, at no cost to such holders. Each holder will be given the right to purchase a specified number of whole shares of our common stock or debt securities for every share of our common stock or debt securities that the holder thereof owned on such record date, as set forth in the applicable prospectus supplement. The subscription rights will be evidenced by subscription rights certificates, which may be in definitive or book-entry form. Each right will entitle the holder to purchase shares of our common stock or our debt securities at a rate and price to be established by our board of directors, as set forth in the applicable prospectus supplement. If holders of rights wish to exercise their subscription rights, they must do so before the expiration date of the subscription rights offering, as set forth in the applicable prospectus supplement. Upon the expiration date, the subscription rights will expire and will no longer be exercisable, unless, in our sole discretion prior to the expiration date, we extend the subscription rights offering.

Exercise Price

Our board of directors will determine the exercise price or prices for the subscription rights based upon a number of factors, including, without limitation, our business prospects, our capital requirements, the price or prices at which an underwriter or standby purchasers may be willing to purchase securities that remain unsold in the subscription rights offering, and general conditions in the securities markets, especially for securities of financial institutions. The subscription price may or may not reflect the actual or long-term fair value of the common stock or debt securities offered in the subscription rights offering. We provide no assurances as to the market values or liquidity of any subscription rights issued, or as to whether or not the market prices of the common stock or debt securities subject to the subscription rights will be more or less than the subscription rights' exercise price during the term of the rights or after the rights expire.

Exercising Rights; Fees and Expenses

The manner of exercising subscription rights will be set forth in the applicable prospectus supplement. Any subscription agent or escrow agent will be set forth in the applicable prospectus supplement. We will pay all fees charged by any subscription agent and escrow agent in connection with the distribution and exercise of subscription rights. Subscription rights holders will be responsible for paying all other commissions, fees, taxes or other expenses incurred in connection with their transfer of subscription rights that are transferable. Neither we nor the subscription agent will pay such expenses.

Expiration of Rights

The applicable prospectus supplement will set forth the expiration date and time ("Expiration Date") for exercising subscription rights. If holders of subscription rights do not exercise their subscription rights prior to such time, their subscription rights will expire and will no longer be exercisable and will have no value. We will

extend the Expiration Date as required by applicable law and may, in our sole discretion, extend the Expiration Date. If we elect to extend the Expiration Date, we will issue a press release announcing such extension prior to the scheduled Expiration Date.

Withdrawal and Termination

We may withdraw the subscription rights offering at any time prior to the Expiration Date for any reason. We may terminate the subscription rights offering, in whole or in part, at any time before completion of the subscription rights offering if there is any judgment, order, decree, injunction, statute, law or regulation entered, enacted, amended or held to be applicable to the subscription rights offering that in the sole judgment of our board of directors would or might make the subscription rights offering or its completion, whether in whole or in part, illegal or otherwise restrict or prohibit completion of the subscription rights offering. We may waive any of these conditions and choose to proceed with the subscription rights offering even if one or more of these events occur. If we terminate the subscription rights offering, in whole or in part, all affected rights will expire without value, and all subscription payments received by the subscription agent will be returned promptly without interest.

Rights of Subscribers

Holders of subscription rights will have no rights as holders with respect to our common stock or debt securities for which the rights may be exercised until they have exercised their rights by payment in full of the exercise price and in the manner provided in the applicable prospectus supplement, and such common stock or debt securities, as applicable, have been issued to such persons. Holders of subscription rights will have no right to revoke their subscriptions or receive their monies back after they have completed and delivered the materials required to exercise their subscription rights and have paid the exercise price to the subscription agent. All exercises of rights will be final and cannot be revoked by the holder of rights.

Regulatory Limitations

We will not be required to issue to any person or group of persons shares of our common stock or debt securities pursuant to the subscription rights offering if, in our sole opinion, such person would be required to give prior notice to or obtain prior approval from, any state or federal governmental authority to own or control such securities if, at the time the rights offering is scheduled to expire, such person has not obtained such clearance or approval in form and substance reasonably satisfactory to us.

Standby Agreements

We may enter into one or more separate agreements with one or more standby underwriters or other persons to purchase, for their own account or on our behalf, our common stock or debt securities not subscribed for in the subscription rights offering. The terms of any such agreements will be described in the applicable prospectus supplement.

PLAN OF DISTRIBUTION

We may offer and sell the securities in one or more of the following ways:

- to or through underwriters or dealers;
- directly to one or more purchasers;
- in “at the market” offerings, within the meaning of Rule 415(a)(4) under the Securities Act, to or through a market maker or into an existing trading market on an exchange or otherwise;
- through agents; or
- through a combination of any of these methods or any other method permitted by law.

Each time that we use this prospectus to sell our securities, we will provide a prospectus supplement that describes the method of distribution of the securities and will set forth the specific terms of the offering of securities, including, as applicable:

- the name or the underwriter, dealer or agent;
- the public offering or purchase price of the securities;
- any discounts and commissions to be allowed or paid to the underwriter or agent;
- all other items constituting underwriting compensation;
- any discounts and commissions to be allowed or paid to dealers;
- any over-allotment option we grant to the underwriter under which the underwriter may purchase additional securities from us; and
- any securities exchanges on which the securities will be listed.

Any initial public offering prices, discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

If an underwriter is utilized in the sale of the securities being offered by this prospectus or any prospectus supplement, an underwriting agreement will be executed under which the underwriter will make resales of the securities to the public. In connection with the sale of the securities, we or the purchasers of securities for whom the underwriter may act as agent, may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriter and/or commissions from the purchasers for which they may act as agent. Unless otherwise indicated in a prospectus supplement, an agent will be acting on a best efforts basis. If a dealer is utilized in the sale of the securities being offered by this prospectus or any prospectus supplement, the securities will be sold to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

Any compensation paid to underwriters, dealers or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers will be provided in the applicable prospectus supplement. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions.

If we offer securities in a subscription rights offering to our existing security holders, we may enter into a standby underwriting agreement with dealers, acting as standby underwriters. We may pay the standby underwriters a commitment fee for the securities they commit to purchase on a standby basis. If we do not enter into a standby underwriting arrangement, we may retain a dealer-manager to manage a subscription rights offering for us.

We may enter into agreements to indemnify underwriters, agents and dealers against civil liabilities, including liabilities under the Securities Act, or to contribute to payments they may be required to make in respect thereof and to reimburse those persons for certain expenses.

Certain underwriters, agents and dealers, and their associates and affiliates, may be customers of, have borrowing relationships with, engage in other transactions with, or perform services, including investment banking services, for us or one or more of our respective affiliates in the ordinary course of business.

The sale and distribution of the securities may be effected from time to time in one or more transactions at:

- a fixed price or prices, which may be changed;
- market prices prevailing at the time of sale;
- prices related to such prevailing market prices; or
- negotiated prices.

Each prospectus supplement will describe the method of distribution of the securities and any applicable conditions or restrictions.

In order to facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may over allot in connection with the offering, creating a short position for their own accounts. In addition, to cover overallocations or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. In any offering of the securities through a syndicate of underwriters, the underwriting syndicate also may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities and may end any of these activities at any time.

We may engage in at the market offerings into an existing trading market in accordance with Rule 415(a)(4) under the Securities Act. In addition, we may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement so indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third party in such sale transactions will be an underwriter and, if not identified in this prospectus, will be named in the applicable prospectus supplement or a post-effective amendment. In addition, we may otherwise loan or pledge securities to a financial institution or other third party that in turn may sell the securities short using this prospectus and an applicable prospectus supplement. Such financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in one business day, unless the parties to any such trade expressly agree otherwise. The applicable prospectus supplement may provide that the original issue date for your securities may be more than one scheduled business day after the trade date for your securities. Accordingly, in such a case, if you wish to trade securities on any date prior to the first business day before the original issue date for your securities, you will be required, by virtue of the fact that your securities initially are expected to settle in more than one scheduled business day after the trade date for your securities, to make alternative settlement arrangements to prevent a failed settlement.

The securities may be new issues of securities and may have no established trading market. We may elect to list other securities we offer pursuant to this prospectus and an applicable prospectus supplement on a national securities exchange, but we are not obligated to do so. Any underwriters who purchase securities from us for public offering and sale may make a market in those securities, but these underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We cannot assure you that there will be a trading market for any securities, and, if a trading market for any securities does develop, we cannot assure you that such market will be liquid.

The specific terms of any lock-up provisions in respect of any given offering will be described in the applicable prospectus supplement.

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities offered by us pursuant to this prospectus will be passed upon for us by Kirton McConkie P.C., Salt Lake City, Utah.

EXPERTS

The consolidated financial statements of FinWise Bancorp incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2024, have been audited by Baker Tilly US, LLP (formerly Moss Adams LLP), an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference. Such consolidated financial statements are incorporated by reference in reliance upon the report of such firm given their authority as experts in accounting and auditing.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this prospectus, except for any information that is superseded by subsequent incorporated documents or by information that is included directly in this prospectus, any prospectus supplement or any related free writing prospectus. We incorporate by reference the documents listed below and any future filings we make with the SEC after the date of this prospectus and until the termination of the offering of securities hereby under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than, in each case, documents or information that is deemed, under the Exchange Act, in accordance with the Exchange Act and SEC rules, to be “furnished” and not filed with the SEC):

- Our Annual Report on [Form 10-K](#) for the year ended December 31, 2024, filed with the SEC on March 26, 2025 (including the information specifically incorporated by reference therein from our Definitive Proxy Statement on [Schedule 14A](#), filed with the SEC on April 29, 2025);
- Our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2025, filed with the SEC on [May 13, 2025](#), for the quarter ended June 30, 2025, filed with the SEC on [August 11, 2025](#) and for the quarter ended September 30, 2025, filed with the SEC on [November 10, 2025](#);
- Our Current Reports on Form 8-K filed with the SEC on [April 22, 2025](#), [June 6, 2025](#) and [June 26, 2025](#); and
- The description of our common stock contained set forth in [Exhibit 4.3](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2024, filed with the SEC on March 26, 2025, and any amendment or report filed for the purpose of updating such description.

You may obtain a copy of any or all of the documents incorporated by reference in this prospectus and any prospectus supplement from the SEC on its web site at www.sec.gov. You also may obtain these documents from us without charge (other than an exhibit to a document unless that exhibit is specifically incorporated by reference into that document) by requesting them from Michael C. O’Brien, Corporate Secretary, FinWise Bancorp, 756 East Winchester, Suite 100, Murray, Utah 84107; telephone (801) 501-7200.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. These filings are available to the public over the Internet at the SEC's website at www.sec.gov. The reports and other information we file with the SEC are also available at our website at www.finwisebancorp.com. We have included the web addresses for the SEC and us as inactive textual references only. Except as specifically incorporated by reference into this prospectus, information on those websites does not constitute part of this prospectus.

We have filed with the SEC a registration statement on Form S-3, which registers the securities that we may offer under this prospectus. This prospectus is part of that registration statement and, as permitted by the SEC's rules, does not contain all the information required to be set forth in the registration statement. For further information, you should read the registration statement and the exhibits filed with or incorporated by reference into the registration statement. You should also read the documents that are incorporated by reference in this prospectus and any applicable prospectus supplement. See "Incorporation of Certain Documents by Reference."

\$150,000,000

FINWISE BANCORP

**Common Stock
Preferred Stock
Debt Securities
Depository Shares
Warrants
Units
Subscription Rights**

PROSPECTUS

These securities are not savings accounts or deposits and are not federally insured or guaranteed.

, 2025

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated costs and expenses in connection with the issuance and distribution of the securities being registered, all of which will be paid by FinWise Bancorp. All amounts are estimates except with respect to the SEC registration fee.

	Amount
SEC registration fee	\$20,715*
FINRA filing fee	**
Accounting fees and expenses	**
Legal fees and expenses	**
Transfer agent fees and expenses	**
Trustee fees and expenses	**
Warrant agent fees and expenses	**
Printing fees and expenses	**
Blue Sky qualification fees and expenses	**
Miscellaneous	**
Total	\$ **

* See the Filing Fee Table attached as Exhibit 107 to this registration statement.

** These fees (other than the SEC Registration Fee to be paid upon filing of this registration statement) will depend on the securities offered, the number of issuances and the nature of offerings, and cannot be estimated at this time.

Item 15. Indemnification of Directors and Officers.

Article VII of the Fourth Amended and Restated Articles of Incorporation of FinWise Bancorp (the “Company”) sets forth the circumstances under which directors, officers, employees and agents of the Company may be insured or indemnified against liability which they incur in their capacities as such:

Article X, Section 10.01 of the Company’s Amended and Restated Bylaws (the “Bylaws”) requires the Company to indemnify any person made a party in any threatened, pending or completed proceeding by reason of the fact that he is or was a director or officer of the Company (or is or was serving at the request of the Company as a director or officer of another corporation), against all expenses, liabilities or losses incurred by such indemnitee in connection with such proceeding to the fullest extent permitted by Utah law. If a director or officer of the Company has been successful on the merits in defense of any proceeding, he is entitled to be indemnified against all costs, charges and expenses incurred by him. The Company is only required to indemnify such indemnitee if the proceeding was initiated by such indemnitee, upon authorization by the board of directors or if the indemnitee is successful on the merits in such proceeding. The right to be indemnified includes the right to be paid by the Company expenses incurred in defending any action in advance of its final disposition. The indemnity and advancements of expenses provided under the Bylaws do not preclude those seeking indemnification or advancement of expenses from other rights to which such persons are entitled. The right to indemnification conferred by Section 10.01(a) or Section 10.03(b) of the Bylaws may be applied retroactively to events occurred prior to the adoption of the Bylaws and may continue to exist after the rescission or restrictive modification of the Bylaws. Under Section 10.03(b) of the Bylaws, the Company is required to make all applicable indemnity payments unless a determination is made the board of directors, or in certain circumstances, independent legal counsel, that indemnification of the director or officer is not proper in the circumstances because he or she had not met the applicable standards of conduct under Utah law.

The Utah Revised Business Corporation Act (the “URBCA”) provides, in pertinent part, as follows:

Except as otherwise provided in the URBCA, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director of the corporation against liability incurred in the proceeding if:

- His conduct was in good faith.
- He reasonably believed that his conduct was in, or not opposed to, the corporation’s best interests.
- In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

However, a corporation may not indemnify a director in connection with either:

- A proceeding by or in the right of the corporation in which the director was determined to be liable to the corporation.
- Any other proceeding charging that the director derived an improper personal benefit (whether or not the proceeding involved action in the director’s official capacity), in which proceeding the director was determined to be liable on the basis that the director derived an improper personal benefit.

A corporation may pay for or reimburse reasonable expenses incurred by a director who is a party to a proceeding in advance of a final disposition if:

- The director furnishes the corporation a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 16-10a-902 of the Utah Code.
- The director furnishes to the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct.
- A determination is made that the facts then known to those making the determination would not preclude indemnification.

A corporation must indemnify a director who was successful in the defense of any proceeding or claim to which the director was a party because of the director’s status as a director of the corporation against reasonable expenses incurred in defending the proceeding or claim for which the director was successful.

Unless a corporation’s articles of incorporation provide otherwise:

- An officer of a corporation is entitled to mandatory indemnification to the same extent as a director of the corporation.
- A corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director.
- A corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent than to a director. However, this must be consistent with public policy and provided for in the corporation’s articles of incorporation, bylaws, action of its board of directors, or contract.

Item 16. Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
1.1	Form of Underwriting Agreement.*
3.1	Fourth Amended and Restated Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant’s Registration Statement on Form S-1 filed with the Securities and Exchange Commission on July 30, 2021 (File No. 333-257929)).

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<u>Exhibit Number</u>	<u>Description</u>
3.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 30, 2023).
4.1	Specimen common stock certificate (incorporated by reference to Exhibit 4.1 of the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 30, 2023).
4.2	Form of Warrant to BFG Members to Purchase Common Stock of FinWise Bancorp (incorporated by reference to Exhibit 4.2 of the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on July 15, 2021 (File No. 333-257929)).
4.3	Form of Warrant Agreement (Stock) (including form of Warrant).*
4.4	Form of Warrant Agreement (Debt) (including form of Warrant).*
4.5	Form of Preferred Stock Certificate and Form of Designations for Preferred Stock.*
4.6	Form of Senior Indenture and Form of Senior Debt Security.**
4.7	Form of Subordinated Indenture and Form of Subordinated Debt Security.**
4.8	Form of Depositary Agreement and Form of Depositary Receipt.*
4.9	Form of Unit Agreement and Form of Unit Certificate.*
4.10	Form of Subscription Rights Agreement and Form of Subscription Rights Certificate.*
5.1	Opinion of Kirton McConkie PC.**
23.1	Consent of Baker Tilly US, LLP.**
23.2	Consent of Kirton McConkie PC (included in Exhibit 5.1).**
24.1	Power of Attorney (included on the signature page in Part II of this Registration Statement).**
25.1	Form T-1 Statement of Eligibility of Trustee under the Senior Indenture. +
25.2	Form T-1 Statement of Eligibility of Trustee under the Subordinated Indenture. +
107	Calculation of Filing Fee Table**

* To be filed subsequently by an amendment to the registration statement or by reference from documents filed or to be filed with the SEC under the Securities Exchange Act of 1934, as amended.

** Filed herewith.

+ To be filed separately under the electronic form type "305B2" pursuant to Section 305(b)(2) of the Trust Indenture Act of 1939, as amended, if applicable.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities

offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

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

Provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

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

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

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

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

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

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

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

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

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

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

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

(6) That, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) That, 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.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Act.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Murray, State of Utah, on November 18, 2025.

FINWISE BANCORP

By: /s/ Kent Landvatter
Name: Kent Landvatter
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the persons whose signatures appear below constitute and appoint Kent Landvatter and Robert Wahlman and each one of them, as their true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for them and in their names, places and steads, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act, as amended, and any and all amendments thereto, and to file the same, with all exhibits thereto, and the other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as they might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or their substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Kent Landvatter</u> Kent Landvatter	Chief Executive Officer and Director (Principal Executive Officer) Chairman of the Board	November 18, 2025
<u>/s/ Robert Wahlman</u> Robert Wahlman	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	November 18, 2025
<u>/s/ Alan Weichselbaum</u> Alan Weichselbaum	Director	November 18, 2025
<u>/s/ Susan Ehrlich</u> Susan Ehrlich	Director	November 18, 2025
<u>/s/ Lisa Ann Nievaard</u> Lisa Ann Nievaard	Director	November 18, 2025
<u>/s/ Jeana Hutchings</u> Jeana Hutchings	Director	November 18, 2025

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Signature	Title	Date
<u>/s/ Gerald E. Cunningham</u> Gerald E. Cunningham	Director	November 18, 2025
<u>/s/ Jim Giordano</u> Jim Giordano	Director	November 18, 2025
<u>/s/ Howard Reynolds</u> Howard Reynolds	Director	November 18, 2025

FINWISE BANCORP

AND

[_____],

AS TRUSTEE

SENIOR INDENTURE

DATED AS OF [_____, ____]

SENIOR DEBT SECURITIES

CROSS-REFERENCE SHEET*

Reconciliation and tie between the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**"), and the Senior Indenture, dated as of [_____, _____], between FinWise Bancorp and [_____, _____], as Trustee:

SECTION OF TRUST INDENTURE ACT	SECTION OF INDENTURE
310(a)(1) and (2)	7.09
310(a)(3) and (4)	Not applicable
310(a)(5)	7.09
310(b)	7.08 and 7.10
311(a) and (b)	7.13
312(a)	5.01 and 5.02(a)
312(b) and (c)	5.02(b) and (c)
313(a)	5.04(a)
313(b)(1)	Not applicable
313(b)(2)	5.04(b)
313(c)	5.04(c)
313(d)	5.04(d)
314(a)	5.03
314(b)	Not applicable
314(c)(1) and (2)	14.04
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	15.05
314(f)	Not applicable
315(a), (c) and (d)	7.01
315(b)	7.14
315(e)	6.14
316(a)(1)	6.12
316(a)(2)	Omitted
316(a) last sentence	8.04
316(b)	6.08
316(c)	8.06
317(a)	6.03 and 6.04
317(b)	4.03(a)
318(a)	15.07

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

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

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THIS INDENTURE, dated as of [_____, _____], between FinWise Bancorp, a corporation duly organized and existing under the laws of the State of Utah (the "**Company**"), and [_____, _____], as trustee (the "**Trustee**," which term shall include any successor trustee appointed pursuant to Article 7 of this Indenture).

WHEREAS, the Company deems it necessary to issue from time to time for its lawful purposes securities (the "**Securities**") evidencing its indebtedness and has duly authorized the execution and delivery of this Indenture to provide for the issuance of the Securities in one or more series, unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, and to have such other provisions as shall be fixed as hereinafter provided; and

WHEREAS, the Company represents that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed, and the execution of this Indenture has in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, is executing this Indenture;

NOW, THEREFORE:

In order to declare the terms and conditions upon which the Securities are authenticated, issued and received, and in consideration of the premises and the purchase and acceptance of the Securities by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

**ARTICLE 1
DEFINITIONS**

Section 1.01 Definitions.

The terms defined in this Section (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act of 1939 (the "**Trust Indenture Act**") or that are by reference therein defined in the Securities Act of 1933 (the "**Securities Act**") shall have the meanings (except as herein otherwise expressly provided or unless the context otherwise requires) assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, and the term "generally accepted accounting principles" means such accounting principles as are generally accepted at the time of any computation. 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. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

"**Additional Amounts**" shall mean any additional amounts to be paid by the Company in respect of Securities of a series, as may be specified pursuant to Section 2.03 hereof and in such Security and under the circumstances specified therein, in respect of specified taxes, assessments or other governmental charges imposed on certain holders who are United States Aliens.

“**Authorized Officer**” shall have the meaning set forth in Section 3.02 hereof.

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

“**Board Resolution**” shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment 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**” shall mean, unless otherwise specified pursuant to Section 2.03(b), any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions or trust companies in the City of New York, New York, or any Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

“**Capital Stock**” shall mean, as to shares of a particular corporation, outstanding shares of stock of any class, whether now or hereafter authorized, irrespective of whether such class shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary liquidation, dissolution or winding up of such corporation.

“**Commission**” shall mean the Securities and Exchange Commission or any successor agency.

“**Company**” shall mean the person named as the “Company” in the first paragraph of this instrument 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**,” “**Company Order**” and “**Company Consent**” mean, respectively, a written request, order or consent signed in the name of the Company by its Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President and delivered to the Trustee.

“**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 [•], Attention: [•], or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the holders and the Company).

“**covenant defeasance**” shall have the meaning set forth in Section 14.03.

“**Default**” or “**default**” shall have the meaning specified in Article 6.

“**defeasance**” shall have the meaning set forth in Section 14.02.

“Depository” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more permanent Global Securities, the person designated as Depository by the Company pursuant to Section 2.03(b), which must be a clearing agency registered under the Exchange Act, 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 series shall mean the Depository with respect to the Securities of such series.

“Dollar” or **“\$”** shall mean a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

“Event of Default” shall have the meaning specified in Article 6.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Exchange Date” shall have the meaning set forth in Section 2.08.

“Global Security” or **“Global Securities”** means a Security or Securities, as the case may be, in the form established pursuant to Section 2.03 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“holder,” “holder of Securities,” “securityholder” or other similar term shall mean in the case of any Registered Security, the person in whose name such Security is registered in the Security Register kept by the Company for that purpose, in accordance with the terms hereof.

“Indebtedness” means, without duplication, the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the following indebtedness of the Company, whether any such indebtedness exists as of the date of the Indenture or is created, incurred or assumed after such date: (i) all obligations for borrowed money, (ii) all obligations evidenced by debentures, Securities or other similar instruments, (iii) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (iv) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (v) all indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others) and (vi) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Company but excluding any obligations of the Company which are required (as opposed to elected to be treated) as capitalized leases under United States generally accepted accounting principles

“Indenture” shall mean this instrument as originally executed and delivered 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, including without limitation, the forms and terms of particular series of Securities established as contemplated by Article 2.

“**Officers’ Certificate**” shall mean a certificate signed by the Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President of the Company and delivered to the Trustee.

“**Opinion of Counsel**” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Trustee, or who may be other counsel reasonably satisfactory to the Trustee.

“**Original Issue Discount Securities**” shall mean any Securities that are initially sold at a discount from the principal amount thereof and that provide upon an Event of Default for declaration of an amount less than the principal amount thereof to be due and payable upon acceleration thereof.

“**Outstanding**” or “**outstanding**,” when used with reference to Securities, shall, subject to the provisions of Section 7.08, Section 8.01 and Section 8.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

- (a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated and held in trust by the Company (if the Company shall act as its own paying agent) for the holders of such Securities; *provided*, that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article 3, or provision satisfactory to the Trustee shall have been made for giving such notice;
- (c) Securities that have been defeased pursuant to Section 14.02 hereof; and
- (d) Securities that have been paid pursuant to Section 2.09, or Securities in exchange for, in lieu of and in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07, unless proof satisfactory to the Trustee is presented that any such Securities are held by bona fide holders in due course.

“**Periodic Offering**” shall mean an offering of Securities of a series, from time to time, the specific terms of which (including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the maturity date or dates thereof and the redemption provisions, if any, with respect thereto) are to be determined by the Company upon the issuance of such Securities.

“**Person**” or “**person**” shall mean 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**,” when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on the Securities of that series are payable as specified as contemplated by Section 2.03(b).

“**record date**” as used with respect to any interest payment date shall have the meaning specified in Section 2.05.

“**Registered Security**” shall mean any Security established pursuant to Section 2.01 and Section 2.03(b) that is registered on the Security Register of the Company.

“**Responsible Officer**,” when used with respect to the Trustee, shall mean any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, 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.

“**Securities**” shall have the meaning set forth in the preamble of this Indenture.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Security Register**” and “**Security Registrar**” shall have the respective meanings set forth in Section 2.07(a) hereof.

“**Series**” or “**Series of Securities**” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.01 and 2.03.

“**Subsidiary**” shall mean, in respect of any Person, any corporation, association, partnership, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“**Trust Indenture Act**,” except as otherwise provided in this Indenture, shall mean the Trust Indenture Act of 1939, as amended, as in force at the date of this Indenture as originally executed.

“**Trustee**” shall mean the person identified as “Trustee” in the first paragraph hereof until the acceptance of appointment of a successor trustee pursuant to the provisions of Article 7, and thereafter shall mean such successor trustee, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“**United States Alien**” shall mean any person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership to the extent that one or more of its members is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“USA PATRIOT Act” shall have the meaning set forth in Section 15.12 hereof.

“Vice President” when used with respect to the Company or the Trustee shall mean any vice president, whether or not designated by a number or word or words added before or after the title “vice president,” including any Executive or Senior Vice President.

“Voting Stock” means outstanding shares of Capital Stock having voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power because of default in dividends or other default

ARTICLE 2
ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01 Amount Unlimited; Issuable in Series.

Upon the execution of this Indenture, or from time to time thereafter, Securities up to the aggregate principal amount and containing terms and conditions from time to time authorized by or pursuant to a Board Resolution, or in an indenture supplemental hereto or Officers’ Certificate, as set forth in Section 2.03, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery the Securities to or upon Company Order, without any further action by the Company but subject to the provisions of Section 2.03, or in an indenture supplemental hereto, as set forth in Section 2.03.

The Securities may be issued in one or more series. The aggregate principal amount of Securities of all series that may be authenticated and delivered and outstanding under this Indenture is not limited hereunder. The Securities of a particular series may be issued up to the aggregate principal amount of Securities for such series from time to time authorized by or pursuant to a Board Resolution. Securities may differ between Series in respect of any matters; provided that all Series of Securities shall be equally and ratably entitled to the benefits of this Indenture.

Section 2.02 Form of Trustee’s Certificate of Authentication.

The form of the Trustee’s certificate of authentication to be borne by the Securities shall be in substantially the following form:

Form of Trustee’s Certificate of Authentication

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

Dated: _____, as Trustee

By: _____
Authorized Signatory

Section 2.03 Form of Securities Generally; Establishment of Terms of Series.

(a) The Registered Securities, if any, of each series, the temporary Global Securities of each series, if any, and the permanent Global Securities of each series, if any, shall be in the forms established from time to time in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officers' Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in an indenture supplemental hereto.

The Securities may be issued in typewritten, printed or engraved form with such letters, numbers or other marks of identification or designation (including "CUSIP" numbers, if then generally in use) and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

(b) At or prior to the initial issuance of Securities of any series, the particular terms of Securities of such series shall be established in or pursuant to one or more Board Resolutions (and to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officers' Certificate (to which shall be attached true and correct copies of the relevant Board Resolutions(s)) detailing such establishment) or established in an indenture supplemental hereto, including the following:

(1) the designation of the particular series (which shall distinguish such series from all other series);

(2) the aggregate principal amount of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to this Indenture and except for any Securities which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(3) whether Securities of the series are to be issuable as Registered Securities, whether any Securities of the series are to be issuable initially in temporary global form and, if so, the name of the Depositary with respect to any such temporary Global Security, and whether any Securities of the series are to be issuable in permanent global form and, if so, whether beneficial owners of interests in any such permanent Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.07 and the name of the Depositary with respect to any such permanent Global Security;

(4) the date as of which any temporary Security in global form representing Outstanding Securities of such series shall be dated, if other than the date of original issuance of the first Securities of the series to be issued;

(5) the person to whom any interest on any Registered Security of the series shall be payable, if other than the person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest, the extent to which, or the manner in which, any interest payable on a temporary Global Security on an interest payment date will be paid if other than in the manner provided in Section 2.05 and the extent to which, or the manner in which, any interest payable on a permanent Global Security on an interest payment date will be paid;

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

(7) the rate or rates, and if applicable the method used to determine the rate, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which such interest shall be payable and the record date or dates for the interest payable on any Registered Securities on any interest payment date;

(8) the place or places at which, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on Securities of such series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(9) the obligation, if any, of the Company to redeem or purchase Securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be so redeemed or purchased, in whole or in part;

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

(11) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof;

(12) the currency, currencies or currency units in which payment of the principal of (and premium, if any, on) and any interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.01;

(13) if the principal of (and premium, if any, on) or any interest on the Securities of the series are to be payable, at the election of the Company or a holder thereof, in one or more currencies or currency units, other than that or those in which the Securities are stated to be payable, the currency or currencies in which payment of the principal of (and premium, if any, on) and any interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

- (14) if the amount of payments of principal of (and premium, if any, on) or any interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;
- (15) whether the Securities will be issued in book-entry only form;
- (16) any interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such series;
- (17) if either or both of Section 14.02 and Section 14.03 do not apply to the Securities of the series;
- (18) whether and under what circumstances the Company will pay Additional Amounts in respect of any series of Securities and whether the Company has the option to redeem such Securities rather than pay such Additional Amounts;
- (19) any provisions relating to the extension of maturity of, or the renewal of, Securities of such series, or the conversion of Securities of such series into other securities of the Company;
- (20) any provisions relating to the purchase or redemption of all or any portion of a tranche or series of Securities, including the period of notice required to redeem those Securities;
- (21) the terms and conditions, if any, pursuant to which the Securities of the series are secured;
- (22) the subordination terms of the Securities of the series; and
- (23) any other terms of the Securities or provisions relating to the payment of principal of, premium (if any) or interest thereon, including, but not limited to, whether such Securities are issuable at a discount or premium, as amortizable Securities, and if payable in, convertible or exchangeable for commodities or for the securities of the Company or any third party.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution or Officers' Certificate referred to above or as set forth in an indenture supplemental hereto, and, unless otherwise provided, the authorized principal amount of any series may be increased to provide for issuances of additional Securities of such series. If so provided by or pursuant to the Board Resolution or Officers' Certificate or supplemental indenture referred to above, the terms of such Securities to be issued from time to time may be determined as set forth in such Board Resolution, Officers' Certificate or supplemental indenture, as the case may be. All Securities of any one series shall be substantially identical except as to denomination, interest rate, maturity and other similar terms and except as may be provided otherwise by or pursuant to such Board Resolution, Officers' Certificate or supplemental indenture.

Section 2.04 Securities in Global Form.

If Securities of a series are issuable in global form, as specified as contemplated by Section 2.03(b), then, notwithstanding clause (10) of Section 2.03(b) and the provisions of Section 2.05, any such Security in global form shall represent such of the Securities of such series Outstanding as shall be specified therein, and any such Security in global form may provide that it shall represent the aggregate amount of Securities Outstanding from time to time endorsed thereon and that the aggregate amount of Securities Outstanding represented thereby may from time to time be reduced to reflect any exchanges of beneficial interests in such Security in global form for Securities of such series as contemplated herein. Any endorsement of a Security in global form to reflect the amount, or any decrease in the amount, of Securities Outstanding represented thereby shall be made by the Trustee or the Security Registrar in such manner and upon instructions given by such person or persons as shall be specified in such Security in global form or in the Company Order to be delivered to the Trustee pursuant to Section 2.06 or Section 2.08. Subject to the provisions of Section 2.06 and, if applicable, Section 2.08, the Trustee or the Security Registrar shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the person or persons specified in such Security in global form or in the applicable Company Order. If a Company Order pursuant to Section 2.06 or Section 2.08 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 2.06 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee or the Security Registrar the Security in global form together with written instructions (which need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 2.06.

Notwithstanding the provisions of Section 2.05, unless otherwise specified as contemplated by Section 2.03(b), payment of principal of and any premium and interest on any Security in permanent global form shall be made to the persons or persons specified therein.

Section 2.05 Denominations; Record Date; Payment of Interest.

(a) Unless otherwise provided as contemplated by Section 2.03(b) with respect to any series of Securities, any Registered Securities of a series shall be issuable in minimum denominations of \$1,000.

(b) The term "record date" as used with respect to an interest payment date for any series of a Registered Security shall mean such day or days as shall be specified as contemplated by Section 2.03(b); *provided, however*, that in the absence of any such provisions with respect to any series, such term shall mean (1) the last day of the calendar month next preceding such interest payment date if such interest payment date is the 15th day of a calendar month; or (2) the 15th day of a calendar month next preceding such interest payment date if such interest payment date is the first day of the calendar month.

Unless otherwise provided as contemplated by Section 2.03 with respect to any series of Securities, the person in whose name any Registered Security is registered at the close of business on the record date with respect to an interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange thereof subsequent to such record date prior to such interest payment date; provided, that if and to the extent the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names the Securities are registered on a subsequent record date established by notice given to the extent and in the manner set forth in Section 15.04 by or on behalf of the Company to the holders of Securities of the series in default not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest, or in any other lawful manner acceptable to the Trustee.

(c) Unless otherwise specified by Board Resolution or Company Order for a particular series of Securities, the principal of, redemption premium, if any, on and interest, if any, on the Securities of any series shall be payable at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series, in Dollars; provided, that, at the option of the Company, payment of interest with respect to a Registered Security may be paid by check mailed to the holders of the Registered Securities entitled thereto at their last addresses as they appear on the Security Register or wired if held in book-entry form at the Depositary.

Section 2.06 Execution, Authentication, Delivery and Dating of Securities.

The Securities shall be signed on behalf of the Company by its Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President. Such signatures may be the manual, electronic or facsimile signatures of such then current officers.

Any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer. Securities bearing the manual, electronic or facsimile signatures of individuals who were, at the actual date of the execution of such Security, 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, as the case may be, or did not hold such offices at the date of such Securities.

Upon the execution and delivery of this Indenture, the Company shall deliver to the Trustee an Officers' Certificate as to the incumbency and specimen signatures of officers authorized to execute and deliver the Securities and give instructions under this Section and, as long as Securities are Outstanding under this Indenture, such incumbency certificate shall be amended and replaced whenever an officer is to be added or deleted from the listing. The Trustee may conclusively rely on the documents delivered pursuant to this Section (unless revoked by superseding comparable documents) and Section 2.03 hereof as to the authorization of the Board of Directors of any Securities delivered hereunder, and the form and terms thereof, and as to the authority of the instructing officers referred to in this Section so to act.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in an unlimited aggregate principal amount upon receipt by the Trustee of a Company Order; provided, that with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Company Order, (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by Company Order or pursuant to such procedures, and (d) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing.

Prior to the issuance of a Security of any new series, and the authentication thereof by the Trustee, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on:

(a) The Board Resolution or Officers' Certificate or indenture supplemental hereto establishing the terms and the form of the Securities of that series pursuant to Section 2.01 and Section 2.03;

(b) An Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance, authentication and delivery of Securities in such form have been complied with;

(c) An Opinion of Counsel stating that the form and terms of such Securities, if any, have been established in conformity with the provisions of this Indenture; *provided, however*, that with respect to Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Securities of such series.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to this Section in connection with the first authentication of Securities of such series unless and until such Opinion of Counsel or other documents have been superseded or revoked. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

Each Registered Security shall be dated the date of its authentication except as otherwise provided by Board Resolution or Officers' Certificate or indenture supplemental hereto.

The aggregate principal amount of Securities of any series outstanding at any time may not exceed any limit upon the maximum principal amount for such series set forth in or pursuant to the Board Resolution or Officers' Certificate or indenture supplemental hereto delivered pursuant to Section 2.03, except as provided in Section 2.08.

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, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.10 together with a written statement stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 2.07 Exchange and Registration of Transfer of Securities.

(a) The Company shall keep, at an office or agency to be designated and maintained by the Company in accordance with Section 4.02 (as such, a "Security Registrar"), registry books (the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register Registered Securities and shall register the transfer of Registered Securities of each such series as provided in this Article 2. Such Security 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 such Security Register shall be open for inspection by the Trustee. Upon due presentment for registration of transfer of any Registered Security of a particular series at such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, the Company shall execute and register and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees a new Registered Security or Registered Securities of such series of any authorized denominations and for an equal aggregate principal amount and tenor.

(b) At the option of the holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized denominations and of an equal aggregate principal amount and tenor. Registered Securities to be exchanged shall be surrendered at any such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, and the Company shall execute and register and the Trustee shall authenticate and make available for delivery in exchange therefor the Security or Securities that the securityholder making the exchange shall be entitled to receive.

(c) 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 registration of transfer or exchange.

All Registered Securities presented for registration of transfer or for exchange, redemption or payment, as the case may be, shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Security Registrar duly executed by, the holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith, other than exchanges pursuant to the terms of this Indenture not involving any transfer.

The Company shall not be required (1) to exchange or register the transfer of Securities of any series to be redeemed for a period of 15 days next preceding any selection of such Securities to be redeemed, or (2) to exchange or register the transfer of any Registered Security so selected, called or being called for redemption, except in the case of any such series to be redeemed in part the portion thereof not to be so redeemed.

(d) Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 2.03(b), any permanent Global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If the beneficial owners of interests in a permanent Global Security are entitled to exchange such interests for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 2.03(b), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee or the Security Registrar definitive Securities of that series in aggregate principal amount equal to the principal amount of such permanent Global Security executed by the Company. On or after the earliest date on which such interests may be so exchanged, in accordance with instructions given by the Company to the Trustee or the Security Registrar and the Depositary (which instructions shall be in writing), such permanent Global Security shall be surrendered from time to time by the Depositary or such other depository as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or in part, for definitive Securities of the same series without charge and the Trustee shall authenticate and make available for delivery in accordance with such instructions, in exchange for each portion of such permanent Global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such permanent Global Security to be exchanged which shall be in the form of Registered Securities; provided, that no such exchanges may occur for a period of 15 days next preceding any selection of Securities of that series and of like tenor for redemption. Promptly following any such exchange in part, such permanent Global Security should be returned by the Trustee or the Security Registrar to the Depositary or such other depository referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a permanent Global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as provided in Section 2.05, interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such interest payment date or proposed date for payment, as the case may be, only to the person to whom interest in respect of such portion of such permanent Global Security is payable in accordance with the provisions of this Indenture.

(e) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Security Registrar shall be responsible for ascertaining whether any transfer complies with the restrictions set forth in this Indenture, the registration provisions of or exemptions from the Securities Act or applicable state securities laws.

Section 2.08 Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon Company Order, authenticate and make available for delivery, temporary Securities of such series (typewritten, printed, lithographed or otherwise produced). Such temporary Securities, in any authorized denominations, shall be substantially in the form of the definitive Securities in lieu of which they are issued, in registered form, in the form approved from time to time by or pursuant to a Board Resolution but with such omissions, insertions, substitutions and other variations as may be appropriate for temporary Securities, all as may be determined by the Company, but not inconsistent with the terms of this Indenture or any provision of applicable law.

Except in the case of temporary Securities in global form (which shall be exchanged as hereinafter provided), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series for the purpose of exchanges of Securities of such series, without charge to the holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations.

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary Global Security of a series (the "Exchange Date"), the Company shall deliver to the Trustee definitive Securities of that series, in aggregate principal amount equal to the principal amount of such temporary Global Security, executed by the Company. On or after the Exchange Date such temporary Global Security shall be presented and surrendered by the Depositary to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or from time to time in part, for definitive Securities of such series without charge, and the Trustee shall authenticate and make available for delivery, in exchange for each portion of such temporary Global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary Global Security to be exchanged.

Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities.

Section 2.09 Mutilated, Destroyed, Lost or Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the destruction, loss or theft of any Security and (b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall, subject to the following paragraph, execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

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

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

The provisions of this Section 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 2.10 Cancellation.

All Securities surrendered for payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, as the case may be, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee. All Registered Securities so delivered shall be promptly cancelled by the Trustee, upon written request of the Company. The Company may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section except as expressly provided by this Indenture. Any cancelled Securities

held by the Trustee shall be disposed in accordance with its then customary procedures and, upon written request of the Company, the Trustee shall deliver to the Company a certificate of such disposal. The acquisition of any Securities by the Company shall not operate as a redemption or satisfaction of the Indebtedness represented thereby unless and until such Securities are surrendered to the Trustee for cancellation.

Section 2.11 Book-Entry Only System.

If specified by the Company pursuant to Section 2.03(b) with respect to Securities represented by a Security in global form, a series of Securities may be issued initially in book-entry only form and, if issued in such form, shall be represented by one or more Securities in global form registered in the name of the Depository or other depository designated with respect thereto. So long as such system of registration is in effect, (a) Securities of such series so issued in book-entry only form will not be issuable in the form of or exchangeable for Securities in certificated or definitive registered form, (b) the records of the Depository or such other depository will be determinative for all purposes and (c) neither the Company, the Trustee nor any paying agent, Security Registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the Depository, or such other depository, as the case may be.

Members of, or participants in, the Depository shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever.

**ARTICLE 3
REDEMPTION OF SECURITIES**

Section 3.01 Redemption of Securities; Applicability of Section.

Redemption of Securities of any series as permitted or required by the terms thereof shall be made in accordance with the terms of such Securities as specified pursuant to Section 2.03(b) hereof and this Article; *provided, however*, that if any provision of any series of Securities shall conflict with any provision of this Section, the provision of such series of Securities shall govern.

Section 3.02 Notice of Redemption; Selection of Securities.

In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of a series of Securities pursuant to Section 3.01, it shall fix a date for redemption. 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 written request, by the Trustee in the name and at the expense of the Company. The Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, on that date prior to the date fixed for a redemption to the holders of such Securities so to be redeemed, as a whole or in part,

(a) as set forth in Board Resolutions, as described in Section 2.03, or (b) as determined by the Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President of the Company (each, an “**Authorized Officer**”) and evidenced by the preparation of an offering document or an Officers’ Certificate specifying the period of notice of such redemption. If the Board Resolutions or an Authorized Officer do not specify a longer period of notice of such redemption, the Company or, at the written request of the Company, the Trustee, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, at least ten Business Days and not more than 60 calendar days prior to the date fixed for a redemption to the holders of such Securities so to be redeemed as a whole or in part. Notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice or any defect in the notice to the holder of any such Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other such Security. If the Company requests the Trustee to give any notice of redemption, it shall make such request in writing in an Officers’ Certificate delivered to the Trustee at least ten days prior to the designated date for delivering such notice, unless a shorter period is satisfactory to the Trustee.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which such Securities are to be redeemed, the CUSIP numbers of such Securities, the Place of Payment where such Securities maturing after the date of redemption, are to be surrendered for payment of the redemption prices, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in the notice, and that on and after the date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all of a series is to be redeemed, the notice of redemption shall specify the numbers of the Securities to be redeemed. In case any Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit in trust with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities or portions of Securities so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. If less than all of a series of Securities is to be redeemed, the Company will give the Trustee adequate written notice at least 45 days in advance (unless a shorter notice shall be satisfactory to the Trustee) as to the aggregate principal amount of Securities to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, pro rata or by lot or in such other manner as it shall deem appropriate and fair, not more than 60 days prior to the date of redemption, the numbers of such Securities Outstanding not previously called for redemption, to be redeemed in whole or in part. The portion of principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company of the Securities to be redeemed. If, however, less than all the Securities of a series having differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular Securities of such series to be redeemed and shall notify the Trustee in writing at least 45 days prior to the relevant redemption date.

Section 3.03 Payment of Securities Called for Redemption.

If notice of redemption has been given as above provided, the Securities or portions of Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after that date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to that date) interest on such Securities or portions of Securities so called for redemption shall cease to accrue. On presentation and surrender of such Securities subject to redemption at the Place of Payment and in the manner specified in such notice, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that unless otherwise specified as contemplated by Section 2.03, installments of interest on Registered Securities whose stated maturity date is on or prior to the date of redemption shall be payable to the holders of such Registered Securities, or one or more predecessor Securities, registered as such at the close of business on the relevant record dates according to their terms and the provisions of Section 2.05.

At the option of the Company, payment with respect to Registered Securities may be made by check to the holders of such Securities or other persons entitled thereto against presentation and surrender of such Securities.

Any Security that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or such holder's attorney duly authorized in writing), and upon such presentation, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the principal of the Security so presented. If a temporary Global Security or permanent Global Security is so surrendered, such new Security so issued shall be a new temporary Global Security or permanent Global Security, respectively.

Section 3.04 Redemption Suspended During Event of Default.

The Trustee shall not redeem any Securities (unless all Securities then outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default of which a Responsible Officer of the Trustee has actual knowledge or has received written notice thereof, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem such Securities, provided funds are deposited with it for such purpose. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the securityholders and applied in the manner set forth in Section 6.06; *provided, however*, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.

**ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY**

Section 4.01 Payment of Principal, Premium and Interest.

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any, on) and any interest on each of the Securities of a series at the place, at the respective times and in the manner provided in the terms of the Securities and this Indenture.

Section 4.02 Offices for Notices and Payments.

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for such series an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served.

The Company will give to the Trustee notice of the location of each such office or agency and of any change in the location thereof. In case the Company shall fail to maintain any such office or agency as required, or shall fail to give such notice of the location or of any change in the location thereof, presentations and surrenders of Securities of that series may be made and notices and demands may be served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands.

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

The Company hereby initially designates the principal Corporate Trust Office of the Trustee as the office of the Company where Registered Securities may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served; *provided, however*, that the Trustee shall not be deemed an agent of the Company for service of legal process.

Section 4.03 Provisions as to Paying Agent.

(a) (a) Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold sums held by it as such agent for the payment of the principal of (and premium, if any, on) or any interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the persons entitled thereto until such sums shall be paid to such persons or otherwise disposed of as herein provided and will notify the Trustee of the receipt of sums to be so held;

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

(3) that at any time when any such failure has occurred and is continuing, it will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of (and premium, if any) or any interest on the Securities of any series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or any interest so becoming due until such sums shall be paid to such persons or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

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

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

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 12.03 and Section 12.04.

Section 4.04 Statement as to Compliance.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, commencing with the fiscal year ending in the year during which the first series of Securities is issued hereunder (but in no event more than one year from the issuance of the first series hereunder), an Officers' Certificate signed by the Chief Executive Officer, President, Chief Financial Officer, or other principal financial officer or principal accounting officer, or Controller of the Company, stating, as to each signer thereof, that:

(a) a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision; and

(b) to the best of his knowledge, based on such review, the Company has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

Section 4.05 Corporate Existence.

Subject to the provisions of Article 11, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises and the corporate existence and rights (charter and statutory) and franchises of its Subsidiaries; provided, that except as set forth in Section 4.06 below, the Company shall not be required to, or to cause any Subsidiary to, preserve any right or franchise or to keep in full force and effect the corporate existence of any Subsidiary if the Company shall determine that the keeping in existence or preservation thereof is no longer desirable in or consistent with the conduct of the business of the Company.

Section 4.06 Reserved.

Section 4.07 Waiver of Covenants.

The Company may omit in any particular instance to comply with any covenant or condition set forth herein if before or after the time for such compliance the holders of a majority in principal amount of the Securities of all series affected thereby then Outstanding shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver 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 in respect of any such covenant or condition shall remain in full force and effect.

Section 4.08 Notice of Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate signed by its Chief Executive Officer, President, Chief Financial Officer, or other principal financial officer or principal accounting officer, or Controller of the Company, stating whether or not to the best knowledge of the signor thereof, the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

ARTICLE 5
SECURITYHOLDER LISTS AND REPORTS
BY THE COMPANY AND THE TRUSTEE

Section 5.01 Securityholder Lists.

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee (1) semiannually, within 15 days before each record date when any Securities of a series are Outstanding, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of such Registered Securities as of such date, and (2) at such other times as the Trustee may request in writing, within 10 days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of Registered Securities of a particular series specified by the Trustee as of a date not more than 15 days prior to the time such information is furnished; provided, however, that if and so long as the Trustee shall be the Security Registrar with respect to such series, such list shall not be required to be furnished.

Section 5.02 Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities contained in the most recent list furnished to it as provided in Section 5.01 or received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other securityholders with respect to their rights under this Indenture or under the Securities. The Company, the Trustee, the Security Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to the sending of any material pursuant to a request made pursuant to Section 312(b) of the Trust Indenture Act.

Section 5.03 Reports by the Company.

The Company covenants so long as Securities are Outstanding:

(a) To file with the Trustee and the Commission, and transmit to holders, copies of such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided, that with respect to any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, the Company intends to file such information, documents or reports with the Commission in electronic form in accordance with Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, will constitute delivery by the Company of such reports to the Trustee and holders in compliance with the Trust Indenture Act; and

(b) Notwithstanding anything to the contrary herein, the Trustee will have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee in accordance with this Section 5.03 will be solely for the purposes of compliance with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents (whether or not filed in electronic form) is for informational purposes only and the Trustee's receipt of such will not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee shall have no liability or responsibility for the filing, content or timelines of any report hereunder aside from any report transmitted under this Indenture.

Section 5.04 Reports by the Trustee.

(a) Within 60 days after [•] of each year commencing with the first [•] following the first issuance of Securities pursuant to Section 2.01, so long as any Securities are outstanding hereunder and if there has been any change in the following, the Trustee shall transmit by mail, first-class postage prepaid, to the securityholders, as their names appear upon the Security Register, a brief report dated as of such [•] with respect to any of the events specified in Section 313(a) and Section 313(b)(2) of the Trust Indenture Act that may have occurred since the later of the immediately preceding [•] and the date of this Indenture.

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

(c) The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

(d) Reports under this Section will be transmitted in the manner and to the Persons required by Section 313(c) and Section 313(d) of the Trust Indenture Act. The Company agrees to notify the Trustee when any Securities become listed on any stock exchange.

**ARTICLE 6
REMEDIES**

Section 6.01 Events of Default; Acceleration of Maturity.

In case one or more of the following Events of Default with respect to a particular series shall have occurred and be continuing:

(a) default in (a) the payment of the principal of (or premium, if any, on) any of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise or (b) any payment required by any sinking or analogous fund established with respect to that series; or

(b) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Securities or in this Indenture for a period of 90 days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Securities of that series at the time Outstanding; or

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

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

(f) any other Event of Default provided with respect to Securities of that series, then, if an Event of Default described in clause (a), (b), (c), or (f) shall have occurred and be continuing, and in each and every such case, unless the principal amount 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% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders) may declare the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding; or, if an Event of Default described in clause (d) or (e) shall have occurred and be continuing, 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% in aggregate principal amount of all the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders), may declare the principal of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities contained to the contrary notwithstanding.

Section 6.02 Rescission and Annulment.

The provisions in Section 6.01 are subject to the condition that if, at any time after the principal of the Securities of any one or more of all series, as the case may be, shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series or of all the Securities, as the case may be, and the principal of (and premium, if any, on) all Securities of such series or of all the Securities, as the case may be (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities), which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any) and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities of such series or all Securities, as the case may be (or, with respect to Original Issue Discount Securities, at the rate specified in the terms of such Securities for interest on overdue principal thereof upon maturity, redemption or acceleration of such series, as the case may be), to the date of such payment or deposit, and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or willful misconduct, and any and all defaults under the Indenture, other than the non-payment of the principal of Securities that has become due by acceleration, shall have been remedied; then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series or with respect to all Securities, as the case may be in such case, treated as a single class and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

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

Section 6.03 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(a) (a) default is made in the payment of any installment of interest on any Security when such interest becomes due and payable and such default continues for a period of 90 days, or

(b) default is made in the payment of the principal or premium, if any, of any Security at the maturity thereof, including any maturity occurring by reason of a call for redemption or otherwise, the Company will, upon demand of the Trustee, pay to it, for the benefit of the holders of such Securities, the whole amount that shall have become due and payable on such Securities for principal or premium, if any, and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by such Securities; 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.

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 proceedings to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the securityholders 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 6.04 Trustee May File Proofs of Claim.

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

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

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each holder of Securities to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders of Securities, 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 7.06. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the holders of the Securities may be entitled to receive in such proceedings, whether in liquidation or under any plan or reorganization or arrangements or otherwise.

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

Section 6.05 Trustee May Enforce Claims Without Possession of Securities.

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

Section 6.06 Application of Money Collected.

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

FIRST: To the payment of all amounts due the Trustee under Section 7.06 or Section 14.05;

SECOND: To the payment of all senior Indebtedness of the Company if and to the extent required by Article 16;

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

FOURTH: To the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 6.07 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;
- (b) the holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such holder or holders have offered to the Trustee 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 proceedings; 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;
- (f) it being understood and intended that no one or more such holders of Securities shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such holders of Securities or to obtain or to seek to obtain priority or preference over any other of such holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such holders of Securities.

Section 6.08 Unconditional Right of Securityholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, the holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 2.05 and Section 3.02) any interest on such Security on the respective stated maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such holder.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such holder, then and in every such case the Company, the Trustee and the holders of Securities 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 holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as provided in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 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 Default shall impair any such right or remedy or constitute a waiver of any such Default or acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders of Securities, as the case may be.

Section 6.12 Control by Securityholders.

The holders of a majority in principal amount of Outstanding Securities of each 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, provided that

- (a) such direction shall not be in conflict with any statute, rule of law or with this Indenture;
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(c) the Trustee need not take any action which it in good faith determines might involve it in personal liability or be unjustly prejudicial to the securityholders not consenting (provided, however, that the Trustee shall not have an affirmative obligation to determine whether such action is unduly prejudicial to the securityholders not consenting).

Upon receipt by the Trustee of any such direction with respect to Securities of a series all or part of which is represented by a temporary Global Security or a permanent Global Security, the Trustee shall establish a record date for determining holders of Outstanding Securities of such series entitled to join in such direction, which record date shall be at the close of business on the day the Trustee receives such direction. The holders on such record date, or their duly designated proxies, and only such persons, shall be entitled to join in such direction, whether or not such holders remain holders after such record date, *provided* that, unless such majority in principal amount shall have been obtained prior to the day which is 90 days after such record date, such direction shall automatically and without further action by any holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a holder, or a proxy of a holder, from giving, after expiration of such 90-day period, a new direction identical to a direction which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 6.12.

Section 6.13 Waiver of Past Defaults.

The holders of a majority in principal amount of the Securities of each series at the time Outstanding may, on behalf of the holders of all the Securities of that series, waive any past default hereunder and its consequences, except a default:

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

(b) in respect of a covenant or provision hereof that pursuant to Article 10 cannot be modified or amended without the consent of the holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Default or 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 6.14 Undertaking for Costs.

All parties to this Indenture agree, and each holder of any Security by holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any holder of any Securities for the enforcement of the payment of the principal of, premium, if any, or any interest on any Security on or after the respective stated maturities expressed in such Security (or, in the case of redemption, on or after the redemption date, except, in the case of a partial redemption, with respect to the portion not so redeemed).

Section 6.15 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 laws 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 benefits 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 7
CONCERNING THE TRUSTEE**

Section 7.01 Duties and Responsibilities of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default of a particular series and after the curing of all Events of Default of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to a particular series has occurred (which has not been cured), the Trustee shall exercise with respect to 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 provisions of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) prior to the occurrence of an Event of Default with respect to a particular series and after the curing of all Events of Default with respect to such series which may have occurred, the duties and obligations of the Trustee with respect to such series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee;

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

(3) 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 Securities pursuant to Section 6.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(d) No provision of this Indenture shall be construed as requiring the Trustee to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if 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.

Section 7.02 Reliance on Documents, Opinions, etc.

Subject to the provisions of Section 7.01:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, judgement, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties not only as the due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained herein. The Trustee need not investigate any fact or matter stated in the document;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or any Assistant Secretary of the Company; and 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 and/or Opinion of Counsel;

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

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

(e) 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, note, coupon or other paper or documents, 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;

(f) 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;

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

(h) in no event will the Trustee be responsible or liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(i) in no event will the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, pandemics, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, sabotage, epidemics, riots, nuclear or natural catastrophes, earthquakes, fires, floods, or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services, labor disputes, acts of civil or military authorities and governmental actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee will use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers hereunder;

(k) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture; and

(l) the permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable other than for its negligence or willful misconduct.

Section 7.03 No Responsibility for Recitals, etc.

The recitals contained herein and in the Securities, other than the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 7.04 Ownership of Securities.

The Trustee, any authenticating agent, any paying agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, authenticating agent, paying agent, Security Registrar or such other agent of the Company or of the Trustee.

Section 7.05 Moneys to be Held in Trust.

Subject to the provisions of Section 12.04 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held un-invested in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon.

Section 7.06 Compensation and Expenses of Trustee.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder as agreed in writing between the Company and the Trustee (which to the extent permitted by law shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee forthwith upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or willful misconduct. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make and to be reimbursed for, advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify each of the Trustee and any predecessor Trustee for, and to hold it harmless against, any and all loss, damage, claims, suit, liability or expense, (including attorney's fees and expenses, and taxes (other than taxes based upon, measured or determined by, the income of the Trustee)) incurred without negligence or willful misconduct on the part of the Trustee, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability, whether asserted by the Company, a Holder or any other person. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

To secure the Company's obligations under this Section, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except that held in trust to pay principal of (and premium, if any) and interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The provisions of this Section shall survive the resignation or removal of the Trustee and the termination of this Indenture.

Section 7.07 Officers' Certificate or Opinion of Counsel as Evidence.

Subject to the provisions of Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate or Opinion of Counsel delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 Disqualifications; Conflicting Interest of Trustee.

If the Trustee has or shall acquire any "conflicting interest" within the meaning of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.09 Eligibility of Trustee.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, (c) shall have at all times a combined capital and surplus of not less than \$50,000,000 and (d) shall not be the Company or any person directly or indirectly controlling, controlled by, or under common control with the Company. 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, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

Section 7.10 Resignation or Removal of Trustee.

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series by giving written notice of resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section 7.08 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 or Securities of such series for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 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

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any securityholder of such series who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of all series (voting as one class) at the time Outstanding may at any time remove the Trustee with respect to Securities of all series and appoint a successor trustee with respect to the Securities of all series.

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

Section 7.11 Acceptance by Successor Trustee.

Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the predecessor trustee shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the predecessor trustee. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee, including the initial Trustee, ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

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

No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be qualified and eligible under the provisions of this Article 7.

Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall mail notice of the succession of such trustee hereunder to all holders of Securities of any applicable series as the names and addresses of such holders shall appear on the registry books. If the Company fails to mail such notice in the prescribed manner within ten days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so mailed at the expense of the Company.

Section 7.12 Successor by Merger, etc.

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 such corporation shall be qualified and eligible under the provisions of this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 7.13 Limitations on Rights of Trustee as Creditor.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

Section 7.14 Notice of Default.

Within 90 days after the occurrence of any default on a series of Securities hereunder of which a Responsible Officer of the Trustee has received notice or is deemed to have notice in accordance with this Section 7.14, the Trustee shall transmit to all securityholders of that series, in the manner and to the extent provided in Section 15.04, notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; *provided, however*, that except in the case of a default in the payment of the principal of or interest on any Security or on the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determine that the withholding of such notice is in the interests of the securityholders; and provided, further, that in the case of any default of the character specified in clause (c) of Section 6.01 no such notice to securityholders shall be given until at least 30 days after the occurrence thereof. The Trustee will not be required to take notice or be deemed to have notice of any default or Event of Default, except failure by the Company to pay or cause to be made any of the payments required to be made to the Trustee, unless a Responsible Officer shall receive written notice of such default or Event of Default from the Company or by the holders of at least 25% in aggregate principal amount of the then Outstanding Securities delivered to the Corporate Trust Office of the Trustee and such notice states that it is a notice of a default or Event of Default with respect to the Securities and this Indenture, and in the absence of such notice so delivered the Trustee may conclusively assume no default or Event of Default exists. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 7.15 Appointment of Authenticating Agent.

The Trustee may appoint an authenticating agent or agents (which may be an affiliate or affiliates of the Company) with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue or upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.09, 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 or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers or to otherwise act as authenticating agent, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (c) shall have at all times a combined capital and surplus of not less than \$50,000,000. If such authenticating agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such authenticating agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, such authenticating agent shall resign immediately in the manner and with the effect specified in this Section.

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

An authenticating agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an authenticating agent by giving written notice thereof to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor authenticating agent which shall be acceptable to the Company and shall promptly give notice of such appointment to all holders of Securities in the manner and to the extent provided in Section 15.04. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each authenticating agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 7.06.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

_____, as Authenticating Agent

By:

Authorized Signatory

If all of the Securities of a series may not be originally issued at one time, and the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing, shall appoint in accordance with this Section an authenticating agent (which, if so requested by the Company, shall be such affiliate of the Company) having an office in a Place of Payment designated by the Company with respect to such series of Securities, *provided* that the terms and conditions of such appointment are acceptable to the Trustee.

**ARTICLE 8
CONCERNING THE SECURITYHOLDERS**

Section 8.01 Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any authorization, notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by securityholders in person or by agent or proxy appointed in writing, or (b) by a combination of such instrument or instruments and any such record of such a meeting of securityholders.

In determining whether the holders of a specified percentage in aggregate principal amount of the Securities of any or all series have taken any action (including the making of any demand or request, the giving of any authorization, direction, notice, consent or waiver or the taking of any other action), (i) the principal amount of any Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable upon an Event of Default pursuant to the terms of such Original Issue Discount Security at the time the taking of such of such action is evidenced to the Trustee, and (ii) the principal amount of a Security denominated in a foreign currency or currency unit shall be the Dollar equivalent, determined as of the date of original issuance of such Security in accordance with Section 2.03(b) hereof, of the principal amount of such Security.

Section 8.02 Proof of Execution by Securityholders.

Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a securityholder or its agent or proxy, or of the holding by any person of a Security, shall be sufficient and conclusive in favor of the Trustee and the Company if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

The principal amount and serial numbers of Registered Securities held by any person, and the date of holding the same, shall be proved by the Security Register.

The record of any securityholders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 Who Are Deemed Absolute Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name such Registered Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Registered Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon), for the purpose of receiving payment of or on account of the principal of (and premium, if any) and, subject to the provisions of Section 2.05 and Section 2.07, any interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Notwithstanding the foregoing, with respect to any temporary or permanent Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or of the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Depository, or impair, as between a Depository and holders of beneficial interests in any temporary or permanent Global Security, as the case may be, the operation of customary practices governing the exercise of the rights of the Depository as holder of such temporary or permanent Global Security.

Section 8.04 Company-Owned Securities Disregarded.

In determining whether the holders of the required aggregate principal amount of Securities have provided any request, demand, authorization, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 8.05 Revocation of Consents; Future Securityholders Bound.

At any time prior to the taking of any action by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security, the identifying number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action, may, by filing written notice with the Trustee at its office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security and of any Security issued upon registration of transfer of or in exchange or substitution therefor in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

Section 8.06 Record Date.

The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of holders of Securities of any series entitled to vote or consent to any action by vote or consent or to otherwise take any action under this Indenture authorized or permitted by Section 6.12 and Section 6.13 or otherwise under this Indenture. Such record date shall be the later of (i) the date 20 days prior to the first solicitation of such consent or vote or other action and (ii) the date of the most recent list of holders of such Securities delivered to the principal corporate trust office of the Trustee pursuant to Section 5.01 prior to such solicitation. If such a record date is fixed, those persons who were holders of such Securities at the close of business on such record date shall be entitled to vote or consent or take such other action, or to revoke any such action, whether or not such persons continue to be holders after such record date, and for that purpose the Outstanding Securities shall be computed as of such record date.

**ARTICLE 9
SECURITYHOLDERS' MEETINGS**

Section 9.01 Purposes of Meeting.

A meeting of holders of any or all series of Securities may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by securityholders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 9.02 Call of Meetings by Trustee.

The Trustee may at any time call a meeting of securityholders of any or all series to take any action specified in Section 9.01, to be held at such time and at such place in New York, New York as the Trustee shall determine. Notice of every meeting of the securityholders of any or all series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given in the manner provided in Section 15.04 not less than 20 nor more than 180 days prior to the date fixed for the meeting.

Section 9.03 Call of Meetings by Company or Securityholders.

In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of securityholders of any or all series to take any action authorized in Section 9.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have provided notice of such meeting in the manner provided in Section 15.04 within 30 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in New York, New York for such meeting and may call such meeting by giving notice thereof as provided in Section 9.02.

Section 9.04 Qualifications for Voting.

To be entitled to vote at any meeting of securityholders a person shall be a holder of one or more Securities of such series Outstanding with respect to which a meeting is being held or a person appointed by an instrument in writing as proxy by such a holder or holders. The only persons who shall be entitled to be present or to speak at any meeting of the securityholders of any series shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 Regulations.

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of securityholders of a series, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it deems fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Article 8 and the appointment of any proxy shall be proved in the manner specified in Article 8. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Article 8 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by securityholders as provided in Section 9.03, in which case the Company or the securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.01 and Section 8.04, at any meeting each securityholder or proxy shall be entitled to one vote for each \$1,000 (or the U.S. Dollar equivalent thereof in connection with Securities issued in a foreign currency or currency unit) Outstanding principal amount of Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote except as a securityholder or proxy. Any meeting of securityholders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time, and the meeting may be reconvened without further notice.

Section 9.06 Voting.

The vote upon any resolution submitted to any meeting of securityholders shall be by written ballot on which shall be subscribed the signatures of the securityholders or proxies and on which shall be inscribed the identifying number or numbers or to which shall be attached a list of identifying numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of securityholders shall be prepared by the secretary of the meeting and there shall be attached to the record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 9.02. The record shall be signed and verified by the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

**ARTICLE 10
SUPPLEMENTAL INDENTURES**

Section 10.01 Supplemental Indentures without Consent of Securityholders.

Without the consent of any holders of Securities, the Company, when authorized by or pursuant to Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, pursuant to Article 11 hereof, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company herein and in the Securities;

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors shall consider to be for the protection of the holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental indenture may provide;

(c) to establish any series of Securities and the form or terms of securities of any series as permitted by Section 2.01 and Section 2.03, including, without limitation, any subordination provisions and any conversion or exchange provisions applicable to Securities that are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding);

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

(e) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, covenant defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article 14, provided that any such action shall not adversely affect the interests of any holder of a Security of such series or any other Security in any material respect;

(f) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities, registrable or not registrable as to principal;

(g) to make provisions with respect to conversion or exchange rights of holders of Securities of any series;

(h) in the case of any series of Securities which are convertible into or exchangeable for commodities or for the securities of the Company to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding securities or any merger, consolidation, statutory share exchange or combination of the Company with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the properties and assets of the Company to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 2.03;

(i) to add to, delete from or revise the conditions, limitations or restrictions on issue, authentication and delivery of Securities of any series;

(j) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act, excluding however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act or any corresponding provision in any similar federal statute hereafter enacted;

(k) to modify, eliminate or add to any of the provisions of this Indenture, provided that any such change or elimination (i) shall become effective only when there is no Security of any series Outstanding and created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or (ii) shall not apply to any Security Outstanding;

(l) to conform the Indenture or the Securities to the description thereof in the related prospectus, offering memorandum or disclosure document (as provided in an Officers' Certificate delivered to the Trustee);

(m) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture;

(n) to add guarantees with respect to, or to secure, any series of Security;

(o) to evidence and provide for the acceptance and appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add or change any 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 7.11; and

(p) to make any change to the Securities of any series or to make any other provisions in regard to matters or questions arising under this Indenture that do not adversely affect the legal rights under this Indenture of any holder of Securities of any series issued under this Indenture, including provisions necessary or desirable to provide for or facilitate the administration of the trusts hereunder.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. No supplemental indenture shall be effective as against the Trustee unless and until the Trustee has duly executed and delivered the same.

Section 10.02 Supplemental Indentures with Consent of Holders.

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of all series at the time Outstanding affected by such supplemental indenture (voting as one class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) 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 such series under this Indenture; provided, that no such supplemental indenture shall (a) extend the fixed maturity of any Securities, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Security so affected, (b) reduce the aforesaid percentage of Securities, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all Securities then Outstanding, (c) modify the subordination provisions in a manner adverse to the holders of such Securities, or (d) modify any of the above provisions.

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

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article 10, the Company shall provide notice, in the manner and to the extent provided in Section 15.04, setting forth in general terms the substance of such supplemental indenture, to all holders of Securities of each series so affected. Any failure of the Company so to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 10.03 Compliance with Trust Indenture Act; Effect of Supplemental Indentures.

Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10 and subject to the provisions in any supplemental indenture relating to the prospective application of such instrument, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities theretofore or thereafter authenticated and delivered hereunder shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 7.01 and Section 7.02, shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article 10 and that all conditions precedent thereto have been satisfied.

Section 10.04 Notation on Securities.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. New Securities of any series so modified as to conform, in the opinion of the Company and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered, without charge to the securityholders, in exchange for the Securities of such series then Outstanding.

ARTICLE 11
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 11.01 Company May Consolidate, etc., on Certain Terms.

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (1) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such corporation, and (2) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

Section 11.02 Successor Corporation Substituted.

In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, 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 make available for delivery 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 thereof.

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.

Section 11.03 Opinion of Counsel and Officers' Certificate to be Given Trustee.

The Trustee shall receive an Opinion of Counsel and Officers' Certificate as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE 12
SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 12.01 Discharge of Indenture.

If at any time

(a) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than (i) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.09, and (ii) Securities 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 4.03), or

(b) all such Securities of such series not theretofore delivered to the Trustee for cancellation (i) shall have become due and payable, or (ii) are by their terms to become due and payable within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company in the case of (b)(i), (b)(ii) or (b)(iii) above shall deposit or cause to be deposited with the Trustee as trust funds the entire amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 12.04) sufficient to pay at maturity or upon redemption all Securities of such series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then this Indenture shall cease to be of further effect with respect to the Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company and subject to Section 15.05, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series or of all series, the obligations of the Company to the Trustee under Section 7.06 shall survive.

The Company will deliver to the Trustee an Officers' Certificate and an Opinion of Counsel which together shall state that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Section 12.02 Deposited Moneys to be Held in Trust by Trustee.

Subject to the provisions of clause (c) of Section 4.03, all moneys deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the persons entitled thereto, of all sums due and to become due thereon for principal and interest (and premium, if any) for which payment of such money has been deposited with the Trustee.

Section 12.03 Paying Agent to Repay Moneys Held.

In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series and the payment of all amounts due to the Trustee under Section 7.06, all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture 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 12.04 Return of Unclaimed Moneys.

Subject to applicable law, any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of (and premium, if any) or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal (and premium, if any, on) or interest shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on written request from the Company, and the holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

**ARTICLE 13
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS**

Section 13.01 Indenture and Securities Solely Corporate Obligations.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the holders thereof and as part of the consideration for the issue of the Securities.

**ARTICLE 14
DEFEASANCE AND COVENANT DEFEASANCE**

Section 14.01 Applicability of Article.

Unless, as specified pursuant to Section 2.03(b), provision is made that either or both of (a) defeasance of the Securities of a series under Section 14.02 and (b) covenant defeasance of the Securities of a series under Section 14.03 shall not apply to the Securities of a series, then the provisions of such Section 14.02 and Section 14.03, together with Section 14.04 and Section 14.05, shall be applicable to the Outstanding Securities of all series upon compliance with the conditions set forth below in this Article 14.

Section 14.02 Defeasance and Discharge.

Subject to Section 14.05, the Company may cause itself to be discharged from its obligations with respect to the Outstanding Securities of any series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**defeasance**”). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of holders of Outstanding Securities of such series to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments of the principal of and any premium and interest on such Securities when such payments are due, (b) the Company’s obligations with respect to such Securities under Section 2.07, Section 2.08, Section 2.09, Section 4.02 and Section 4.03 and such obligations as shall be ancillary thereto, (c) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder, and (d) this Article 14. Subject to compliance with this Article 14, defeasance with respect to Securities of a series by the Company is permitted under this Section 14.02 notwithstanding the prior exercise of its rights under Section 14.03 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

Section 14.03 Covenant Defeasance.

The Company may cause itself to be released from its obligations under any Sections applicable to Securities of a series that are determined pursuant to Section 2.03(b) to be subject to this provision with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**covenant defeasance**”). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, 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 Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

Section 14.04 Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions precedent or, as specifically noted below, subsequent to application of either Section 14.02 or Section 14.03 to the Outstanding Securities of such series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (i) money in an amount, or (ii) U.S. Government Obligations which through the scheduled payment of principal and interest 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

thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (i) the principal of and any premium and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (ii) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article 3 which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt;

(b) No default, or event that after notice or lapse of time, or both, would become a default with respect to the Securities of such series, shall have happened and be continuing (i) on the date of such deposit or (ii) insofar as Section 6.01(a) and Section 6.01(b) are concerned, at any time during the period ending on the 123rd 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 the condition in this clause (b) is a condition subsequent and shall not be deemed satisfied until the expiration of such period);

(c) Such defeasance or covenant defeasance shall not (A) cause the Trustee for the Securities of such series to have a conflicting interest as defined in Section 7.08 or for purposes of the Trust Indenture Act with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

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

(e) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) In the case of a defeasance under Section 14.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(g) In the case of covenant defeasance under Section 14.03, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(h) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.03(b); and

(i) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent and subsequent provided for in this Indenture relating to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03, as the case may be, have been complied with.

Section 14.05 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.04 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (but not including the Company acting as its own paying agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal and any premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.04 or the principal and interest received in respect thereof.

Anything herein 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. Government Obligations held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, provided that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Anything herein to the contrary notwithstanding, if and to the extent the deposited money or U.S. Government Obligations (or the proceeds thereof) either (i) cannot be applied by the Trustee in accordance with this Section because of a court order or by operation of Article 16 or (ii) are for any reason insufficient in amount, then the Company's obligations to pay principal of and any premium and interest on the Securities of such series shall be reinstated to the extent necessary to cover the deficiency on any due date for payment. In any such case, the Company's interest in the deposited money and U.S. Government Obligations (and proceeds thereof) shall be reinstated to the extent the Company's payment obligations are reinstated.

**ARTICLE 15
MISCELLANEOUS PROVISIONS**

Section 15.01 Benefits of Indenture Restricted to Parties and Securityholders.

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness).

Section 15.02 Provisions Binding on Company's Successors.

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

Section 15.03 Addresses for Notices, etc., to Company and Trustee.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Indenture is duly given if in writing and delivered in person or delivered by first-class postage prepaid mail, facsimile, email or overnight air courier guaranteeing next day delivery, to the other's address:

- (1) If to the Trustee, addressed to the Trustee at the principal Corporate Trust Office of the Trustee at [•], Attention: [•], Telephone: [•].
- (2) If to the Company by the Trustee or by the holders of Securities, addressed to it at 756 East Winchester, Suite 100, Murray, Utah 84104, Attn: Chief Financial Officer.

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications will be deemed to have been duly given: five Business Days after being deposited in the mail, postage prepaid, if delivered by mail; on the first Business Day after being sent, if sent by facsimile and the sender receives confirmation of successful transmission; upon confirmation of transmittal (but excluding any automatic reply to such email), if sent by email; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Section 15.04 Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice of holders of Securities of any event, such notice shall be sufficiently given to holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each holder of a Registered Security affected by such event, at the address of such holder as it appears in the Security Register, not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to holders of Registered Securities by mail, then such notification as shall be made with the approval of the Trustee shall constitute sufficient notice to such holders for every purpose hereunder. In any case where notice to holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular holder of a Registered Security shall affect the sufficiency of such notice with respect to other holders of Registered Securities.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given when delivered to the Depositary for such Security (or its designee) pursuant to the customary procedures of such Depositary.

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

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language.

Section 15.05 Evidence of Compliance with Conditions Precedent.

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

Each Officers' Certificate and Opinion of Counsel provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 15.06 Legal Holidays.

In any case where the date of maturity of interest on or principal of the Securities or the date fixed for redemption of any Securities shall be a Saturday or Sunday or a legal holiday in New York, New York, or in such other place or places as the Company may designate pursuant to Section 4.02, or a day on which banking institutions in New York, New York, or in such other place or places are authorized by law or required by regulation or executive order to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 15.07 Trust Indenture Act to Control.

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

Section 15.08 Execution in Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page by facsimile or an email in PDF format shall have the same legal effect as the delivery of a signature page containing an original signature.

Section 15.09 Governing Law; Waiver of Jury Trial.

THIS INDENTURE AND EACH SECURITY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

The parties hereby (i) irrevocably submit to the non-exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan, the city of New York, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

Section 15.10 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.

The Trustee, by its execution of this Indenture, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth. This Indenture, any supplemental indenture hereto and the exhibits hereto or thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 15.11 Interpretations.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 15.12 USA PATRIOT Act.

The parties hereto acknowledge that in accordance with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

**ARTICLE 16
RANKING OF SECURITIES**

Section 16.01 Ranking.

Except as otherwise provided in a supplemental indenture or pursuant to Section 2.01, the Company agrees, and each holder by accepting a Security agrees, that the indebtedness evidenced by the Securities constitutes and will constitute a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured Indebtedness of the Company, ranking equally with other existing and future senior unsecured Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Securities by the terms of such Indebtedness.

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

FINWISE BANCORP

By: _____
Name:
Title:

[*],
AS TRUSTEE

ATTEST:

By: _____
Name:
Title:

FINWISE BANCORP

AND

[_____],

AS TRUSTEE

SUBORDINATED INDENTURE

DATED AS OF [_____, _____]

SUBORDINATED DEBT SECURITIES

CROSS-REFERENCE SHEET*

Reconciliation and tie between the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**"), and the Subordinated Indenture, dated as of [_____, _____], between FinWise Bancorp and [_____, _____], as Trustee:

SECTION OF TRUST INDENTURE ACT	SECTION OF INDENTURE
310(a)(1) and (2)	7.09
310(a)(3) and (4)	Not applicable
310(a)(5)	7.09
310(b)	7.08 and 7.10
311(a) and (b)	7.13
312(a)	5.01 and 5.02(a)
312(b) and (c)	5.02(b) and (c)
313(a)	5.04(a)
313(b)(1)	Not applicable
313(b)(2)	5.04(b)
313(c)	5.04(c)
313(d)	5.04(d)
314(a)	5.03
314(b)	Not applicable
314(c)(1) and (2)	14.04
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	15.05
314(f)	Not applicable
315(a), (c) and (d)	7.01
315(b)	7.14
315(e)	6.14
316(a)(1)	6.12
316(a)(2)	Omitted
316(a) last sentence	8.04
316(b)	6.08
316(c)	8.06
317(a)	6.03 and 6.04
317(b)	4.03(a)
318(a)	15.07

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

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

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THIS INDENTURE, dated as of [_____, _____], between FinWise Bancorp, a corporation duly organized and existing under the laws of the State of Utah (the "**Company**"), and [_____, _____], as trustee (the "**Trustee**," which term shall include any successor trustee appointed pursuant to Article 7 of this Indenture).

WHEREAS, the Company deems it necessary to issue from time to time for its lawful purposes securities (the "**Securities**") evidencing its indebtedness and has duly authorized the execution and delivery of this Indenture to provide for the issuance of the Securities in one or more series, unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, and to have such other provisions as shall be fixed as hereinafter provided; and

WHEREAS, the Company represents that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed, and the execution of this Indenture has in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, is executing this Indenture;

NOW, THEREFORE:

In order to declare the terms and conditions upon which the Securities are authenticated, issued and received, and in consideration of the premises and the purchase and acceptance of the Securities by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

**ARTICLE 1
DEFINITIONS**

Section 1.01 Definitions.

The terms defined in this Section (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act of 1939 (the "**Trust Indenture Act**") or that are by reference therein defined in the Securities Act of 1933 (the "**Securities Act**") shall have the meanings (except as herein otherwise expressly provided or unless the context otherwise requires) assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles, and the term "generally accepted accounting principles" means such accounting principles as are generally accepted at the time of any computation. 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. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

"**Additional Amounts**" shall mean any additional amounts to be paid by the Company in respect of Securities of a series, as may be specified pursuant to Section 2.03 hereof and in such Security and under the circumstances specified therein, in respect of specified taxes, assessments or other governmental charges imposed on certain holders who are United States Aliens.

“**Authorized Officer**” shall have the meaning set forth in Section 3.02 hereof.

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

“**Board Resolution**” shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment 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**” shall mean, unless otherwise specified pursuant to Section 2.03(b), any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions or trust companies in the City of New York, New York, or any Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

“**Capital Stock**” shall mean, as to shares of a particular corporation, outstanding shares of stock of any class, whether now or hereafter authorized, irrespective of whether such class shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary liquidation, dissolution or winding up of such corporation.

“**Commission**” shall mean the Securities and Exchange Commission or any successor agency.

“**Company**” shall mean the person named as the “Company” in the first paragraph of this instrument 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**,” “**Company Order**” and “**Company Consent**” mean, respectively, a written request, order or consent signed in the name of the Company by its Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President and delivered to the Trustee.

“**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 [•], Attention: [•], or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the holders and the Company).

“**covenant defeasance**” shall have the meaning set forth in Section 14.03.

“**Default**” or “**default**” shall have the meaning specified in Article 6.

“**defeasance**” shall have the meaning set forth in Section 14.02.

“**Depository**” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more permanent Global Securities, the person designated as Depository by the Company pursuant to Section 2.03(b), which must be a clearing agency registered under the Exchange Act, 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 series shall mean the Depository with respect to the Securities of such series.

“**Dollar**” or “**\$**” shall mean a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

“**Event of Default**” shall have the meaning specified in Article 6.

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

“**Exchange Date**” shall have the meaning set forth in Section 2.08.

“**Global Security**” or “**Global Securities**” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.03 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“**holder**,” “**holder of Securities**,” “**securityholder**” or other similar term shall mean in the case of any Registered Security, the person in whose name such Security is registered in the Security Register kept by the Company for that purpose, in accordance with the terms hereof.

“**Indebtedness**” means, without duplication, the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the following indebtedness of the Company, whether any such indebtedness exists as of the date of the Indenture or is created, incurred or assumed after such date: (i) all obligations for borrowed money, (ii) all obligations evidenced by debentures, Securities or other similar instruments, (iii) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (iv) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (v) all indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others) and (vi) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Company but excluding any obligations of the Company which are required (as opposed to elected to be treated) as capitalized leases under United States generally accepted accounting principles

“**Indenture**” shall mean this instrument as originally executed and delivered 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, including without limitation, the forms and terms of particular series of Securities established as contemplated by Article 2.

"Officers' Certificate" shall mean a certificate signed by the Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President of the Company and delivered to the Trustee.

"Opinion of Counsel" shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Trustee, or who may be other counsel reasonably satisfactory to the Trustee.

"Original Issue Discount Securities" shall mean any Securities that are initially sold at a discount from the principal amount thereof and that provide upon an Event of Default for declaration of an amount less than the principal amount thereof to be due and payable upon acceleration thereof.

"Outstanding" or **"outstanding,"** when used with reference to Securities, shall, subject to the provisions of Section 7.08, Section 8.01 and Section 8.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

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

(b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated and held in trust by the Company (if the Company shall act as its own paying agent) for the holders of such Securities; *provided*, that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article 3, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities that have been defeased pursuant to Section 14.02 hereof; and

(d) Securities that have been paid pursuant to Section 2.09, or Securities in exchange for, in lieu of and in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07, unless proof satisfactory to the Trustee is presented that any such Securities are held by bona fide holders in due course.

"Periodic Offering" shall mean an offering of Securities of a series, from time to time, the specific terms of which (including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the maturity date or dates thereof and the redemption provisions, if any, with respect thereto) are to be determined by the Company upon the issuance of such Securities.

"Person" or **"person"** shall mean 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," when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on the Securities of that series are payable as specified as contemplated by Section 2.03(b).

“**record date**” as used with respect to any interest payment date shall have the meaning specified in Section 2.05.

“**Registered Security**” shall mean any Security established pursuant to Section 2.01 and Section 2.03(b) that is registered on the Security Register of the Company.

“**Responsible Officer**,” when used with respect to the Trustee, shall mean any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, 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.

“**Securities**” shall have the meaning set forth in the preamble of this Indenture.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Security Register**” and “**Security Registrar**” shall have the respective meanings set forth in Section 2.07(a) hereof.

“**Series**” or “**Series of Securities**” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.01 and 2.03.

“**Subsidiary**” shall mean, in respect of any Person, any corporation, association, partnership, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“**Trust Indenture Act**,” except as otherwise provided in this Indenture, shall mean the Trust Indenture Act of 1939, as amended, as in force at the date of this Indenture as originally executed.

“**Trustee**” shall mean the person identified as “Trustee” in the first paragraph hereof until the acceptance of appointment of a successor trustee pursuant to the provisions of Article 7, and thereafter shall mean such successor trustee, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“**United States Alien**” shall mean any person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership to the extent that one or more of its members is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“USA PATRIOT Act” shall have the meaning set forth in Section 15.12 hereof.

“Vice President” when used with respect to the Company or the Trustee shall mean any vice president, whether or not designated by a number or word or words added before or after the title “vice president,” including any Executive or Senior Vice President.

“Voting Stock” means outstanding shares of Capital Stock having voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power because of default in dividends or other default

ARTICLE 2
ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01 Amount Unlimited; Issuable in Series.

Upon the execution of this Indenture, or from time to time thereafter, Securities up to the aggregate principal amount and containing terms and conditions from time to time authorized by or pursuant to a Board Resolution, or in an indenture supplemental hereto or Officers’ Certificate, as set forth in Section 2.03, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery the Securities to or upon Company Order, without any further action by the Company but subject to the provisions of Section 2.03, or in an indenture supplemental hereto, as set forth in Section 2.03.

The Securities may be issued in one or more series. The aggregate principal amount of Securities of all series that may be authenticated and delivered and outstanding under this Indenture is not limited hereunder. The Securities of a particular series may be issued up to the aggregate principal amount of Securities for such series from time to time authorized by or pursuant to a Board Resolution. Securities may differ between Series in respect of any matters; provided that all Series of Securities shall be equally and ratably entitled to the benefits of this Indenture.

Section 2.02 Form of Trustee’s Certificate of Authentication.

The form of the Trustee’s certificate of authentication to be borne by the Securities shall be in substantially the following form:

Form of Trustee’s Certificate of Authentication

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

Dated: _____, as Trustee

By: _____
Authorized Signatory

Section 2.03 Form of Securities Generally; Establishment of Terms of Series.

(a) The Registered Securities, if any, of each series, the temporary Global Securities of each series, if any, and the permanent Global Securities of each series, if any, shall be in the forms established from time to time in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officers' Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in an indenture supplemental hereto.

The Securities may be issued in typewritten, printed or engraved form with such letters, numbers or other marks of identification or designation (including "CUSIP" numbers, if then generally in use) and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

(b) At or prior to the initial issuance of Securities of any series, the particular terms of Securities of such series shall be established in or pursuant to one or more Board Resolutions (and to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officers' Certificate (to which shall be attached true and correct copies of the relevant Board Resolutions(s)) detailing such establishment) or established in an indenture supplemental hereto, including the following:

(1) the designation of the particular series (which shall distinguish such series from all other series);

(2) the aggregate principal amount of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to this Indenture and except for any Securities which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(3) whether Securities of the series are to be issuable as Registered Securities, whether any Securities of the series are to be issuable initially in temporary global form and, if so, the name of the Depository with respect to any such temporary Global Security, and whether any Securities of the series are to be issuable in permanent global form and, if so, whether beneficial owners of interests in any such permanent Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.07 and the name of the Depository with respect to any such permanent Global Security;

(4) the date as of which any temporary Security in global form representing Outstanding Securities of such series shall be dated, if other than the date of original issuance of the first Securities of the series to be issued;

(5) the person to whom any interest on any Registered Security of the series shall be payable, if other than the person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest, the extent to which, or the manner in which, any interest payable on a temporary Global Security on an interest payment date will be paid if other than in the manner provided in Section 2.05 and the extent to which, or the manner in which, any interest payable on a permanent Global Security on an interest payment date will be paid;

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

(7) the rate or rates, and if applicable the method used to determine the rate, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which such interest shall be payable and the record date or dates for the interest payable on any Registered Securities on any interest payment date;

(8) the place or places at which, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on Securities of such series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(9) the obligation, if any, of the Company to redeem or purchase Securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be so redeemed or purchased, in whole or in part;

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

(11) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof;

(12) the currency, currencies or currency units in which payment of the principal of (and premium, if any, on) and any interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.01;

(13) if the principal of (and premium, if any, on) or any interest on the Securities of the series are to be payable, at the election of the Company or a holder thereof, in one or more currencies or currency units, other than that or those in which the Securities are stated to be payable, the currency or currencies in which payment of the principal of (and premium, if any, on) and any interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

- (14) if the amount of payments of principal of (and premium, if any, on) or any interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;
- (15) whether the Securities will be issued in book-entry only form;
- (16) any interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such series;
- (17) if either or both of Section 14.02 and Section 14.03 do not apply to the Securities of the series;
- (18) whether and under what circumstances the Company will pay Additional Amounts in respect of any series of Securities and whether the Company has the option to redeem such Securities rather than pay such Additional Amounts;
- (19) any provisions relating to the extension of maturity of, or the renewal of, Securities of such series, or the conversion of Securities of such series into other securities of the Company;
- (20) any provisions relating to the purchase or redemption of all or any portion of a tranche or series of Securities, including the period of notice required to redeem those Securities;
- (21) the terms and conditions, if any, pursuant to which the Securities of the series are secured;
- (22) the subordination terms of the Securities of the series; and
- (23) any other terms of the Securities or provisions relating to the payment of principal of, premium (if any) or interest thereon, including, but not limited to, whether such Securities are issuable at a discount or premium, as amortizable Securities, and if payable in, convertible or exchangeable for commodities or for the securities of the Company or any third party.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution or Officers' Certificate referred to above or as set forth in an indenture supplemental hereto, and, unless otherwise provided, the authorized principal amount of any series may be increased to provide for issuances of additional Securities of such series. If so provided by or pursuant to the Board Resolution or Officers' Certificate or supplemental indenture referred to above, the terms of such Securities to be issued from time to time may be determined as set forth in such Board Resolution, Officers' Certificate or supplemental indenture, as the case may be. All Securities of any one series shall be substantially identical except as to denomination, interest rate, maturity and other similar terms and except as may be provided otherwise by or pursuant to such Board Resolution, Officers' Certificate or supplemental indenture.

Section 2.04 Securities in Global Form.

If Securities of a series are issuable in global form, as specified as contemplated by Section 2.03(b), then, notwithstanding clause (10) of Section 2.03(b) and the provisions of Section 2.05, any such Security in global form shall represent such of the Securities of such series Outstanding as shall be specified therein, and any such Security in global form may provide that it shall represent the aggregate amount of Securities Outstanding from time to time endorsed thereon and that the aggregate amount of Securities Outstanding represented thereby may from time to time be reduced to reflect any exchanges of beneficial interests in such Security in global form for Securities of such series as contemplated herein. Any endorsement of a Security in global form to reflect the amount, or any decrease in the amount, of Securities Outstanding represented thereby shall be made by the Trustee or the Security Registrar in such manner and upon instructions given by such person or persons as shall be specified in such Security in global form or in the Company Order to be delivered to the Trustee pursuant to Section 2.06 or Section 2.08. Subject to the provisions of Section 2.06 and, if applicable, Section 2.08, the Trustee or the Security Registrar shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the person or persons specified in such Security in global form or in the applicable Company Order. If a Company Order pursuant to Section 2.06 or Section 2.08 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 2.06 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee or the Security Registrar the Security in global form together with written instructions (which need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 2.06.

Notwithstanding the provisions of Section 2.05, unless otherwise specified as contemplated by Section 2.03(b), payment of principal of and any premium and interest on any Security in permanent global form shall be made to the persons or persons specified therein.

Section 2.05 Denominations; Record Date; Payment of Interest.

(a) Unless otherwise provided as contemplated by Section 2.03(b) with respect to any series of Securities, any Registered Securities of a series shall be issuable in minimum denominations of \$1,000.

(b) The term "record date" as used with respect to an interest payment date for any series of a Registered Security shall mean such day or days as shall be specified as contemplated by Section 2.03(b); *provided, however*, that in the absence of any such provisions with respect to any series, such term shall mean (1) the last day of the calendar month next preceding such interest payment date if such interest payment date is the 15th day of a calendar month; or (2) the 15th day of a calendar month next preceding such interest payment date if such interest payment date is the first day of the calendar month.

Unless otherwise provided as contemplated by Section 2.03 with respect to any series of Securities, the person in whose name any Registered Security is registered at the close of business on the record date with respect to an interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange thereof subsequent to such record date prior to such interest payment date; provided, that if and to the extent the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names the Securities are registered on a subsequent record date established by notice given to the extent and in the manner set forth in Section 15.04 by or on behalf of the Company to the holders of Securities of the series in default not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest, or in any other lawful manner acceptable to the Trustee.

(c) Unless otherwise specified by Board Resolution or Company Order for a particular series of Securities, the principal of, redemption premium, if any, on and interest, if any, on the Securities of any series shall be payable at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series, in Dollars; provided, that, at the option of the Company, payment of interest with respect to a Registered Security may be paid by check mailed to the holders of the Registered Securities entitled thereto at their last addresses as they appear on the Security Register or wired if held in book-entry form at the Depository.

Section 2.06 Execution, Authentication, Delivery and Dating of Securities.

The Securities shall be signed on behalf of the Company by its Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President. Such signatures may be the manual, electronic or facsimile signatures of such then current officers.

Any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer. Securities bearing the manual, electronic or facsimile signatures of individuals who were, at the actual date of the execution of such Security, 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, as the case may be, or did not hold such offices at the date of such Securities.

Upon the execution and delivery of this Indenture, the Company shall deliver to the Trustee an Officers' Certificate as to the incumbency and specimen signatures of officers authorized to execute and deliver the Securities and give instructions under this Section and, as long as Securities are Outstanding under this Indenture, such incumbency certificate shall be amended and replaced whenever an officer is to be added or deleted from the listing. The Trustee may conclusively rely on the documents delivered pursuant to this Section (unless revoked by superseding comparable documents) and Section 2.03 hereof as to the authorization of the Board of Directors of any Securities delivered hereunder, and the form and terms thereof, and as to the authority of the instructing officers referred to in this Section so to act.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in an unlimited aggregate principal amount upon receipt by the Trustee of a Company Order; provided, that with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Company Order, (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by Company Order or pursuant to such procedures, and (d) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing.

Prior to the issuance of a Security of any new series, and the authentication thereof by the Trustee, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on:

(a) The Board Resolution or Officers' Certificate or indenture supplemental hereto establishing the terms and the form of the Securities of that series pursuant to Section 2.01 and Section 2.03;

(b) An Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance, authentication and delivery of Securities in such form have been complied with;

(c) An Opinion of Counsel stating that the form and terms of such Securities, if any, have been established in conformity with the provisions of this Indenture; *provided, however*, that with respect to Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Securities of such series.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to this Section in connection with the first authentication of Securities of such series unless and until such Opinion of Counsel or other documents have been superseded or revoked. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

Each Registered Security shall be dated the date of its authentication except as otherwise provided by Board Resolution or Officers' Certificate or indenture supplemental hereto.

The aggregate principal amount of Securities of any series outstanding at any time may not exceed any limit upon the maximum principal amount for such series set forth in or pursuant to the Board Resolution or Officers' Certificate or indenture supplemental hereto delivered pursuant to Section 2.03, except as provided in Section 2.08.

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, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.10 together with a written statement stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 2.07 Exchange and Registration of Transfer of Securities.

(a) The Company shall keep, at an office or agency to be designated and maintained by the Company in accordance with Section 4.02 (as such, a "Security Registrar"), registry books (the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register Registered Securities and shall register the transfer of Registered Securities of each such series as provided in this Article 2. Such Security 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 such Security Register shall be open for inspection by the Trustee. Upon due presentment for registration of transfer of any Registered Security of a particular series at such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, the Company shall execute and register and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees a new Registered Security or Registered Securities of such series of any authorized denominations and for an equal aggregate principal amount and tenor.

(b) At the option of the holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized denominations and of an equal aggregate principal amount and tenor. Registered Securities to be exchanged shall be surrendered at any such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, and the Company shall execute and register and the Trustee shall authenticate and make available for delivery in exchange therefor the Security or Securities that the securityholder making the exchange shall be entitled to receive.

(c) 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 registration of transfer or exchange.

All Registered Securities presented for registration of transfer or for exchange, redemption or payment, as the case may be, shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Security Registrar duly executed by, the holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith, other than exchanges pursuant to the terms of this Indenture not involving any transfer.

The Company shall not be required (1) to exchange or register the transfer of Securities of any series to be redeemed for a period of 15 days next preceding any selection of such Securities to be redeemed, or (2) to exchange or register the transfer of any Registered Security so selected, called or being called for redemption, except in the case of any such series to be redeemed in part the portion thereof not to be so redeemed.

(d) Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 2.03(b), any permanent Global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If the beneficial owners of interests in a permanent Global Security are entitled to exchange such interests for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 2.03(b), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee or the Security Registrar definitive Securities of that series in aggregate principal amount equal to the principal amount of such permanent Global Security executed by the Company. On or after the earliest date on which such interests may be so exchanged, in accordance with instructions given by the Company to the Trustee or the Security Registrar and the Depositary (which instructions shall be in writing), such permanent Global Security shall be surrendered from time to time by the Depositary or such other depositary as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or in part, for definitive Securities of the same series without charge and the Trustee shall authenticate and make available for delivery in accordance with such instructions, in exchange for each portion of such permanent Global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such permanent Global Security to be exchanged which shall be in the form of Registered Securities; provided, that no such exchanges may occur for a period of 15 days next preceding any selection of Securities of that series and of like tenor for redemption. Promptly following any such exchange in part, such permanent Global Security should be returned by the Trustee or the Security Registrar to the Depositary or such other depositary referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a permanent Global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as provided in Section 2.05, interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such interest payment date or proposed date for payment, as the case may be, only to the person to whom interest in respect of such portion of such permanent Global Security is payable in accordance with the provisions of this Indenture.

(e) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Security Registrar shall be responsible for ascertaining whether any transfer complies with the restrictions set forth in this Indenture, the registration provisions of or exemptions from the Securities Act or applicable state securities laws.

Section 2.08 Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon Company Order, authenticate and make available for delivery, temporary Securities of such series (typewritten, printed, lithographed or otherwise produced). Such temporary Securities, in any authorized denominations, shall be substantially in the form of the definitive Securities in lieu of which they are issued, in registered form, in the form approved from time to time by or pursuant to a Board Resolution but with such omissions, insertions, substitutions and other variations as may be appropriate for temporary Securities, all as may be determined by the Company, but not inconsistent with the terms of this Indenture or any provision of applicable law.

Except in the case of temporary Securities in global form (which shall be exchanged as hereinafter provided), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series for the purpose of exchanges of Securities of such series, without charge to the holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations.

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary Global Security of a series (the "**Exchange Date**"), the Company shall deliver to the Trustee definitive Securities of that series, in aggregate principal amount equal to the principal amount of such temporary Global Security, executed by the Company. On or after the Exchange Date such temporary Global Security shall be presented and surrendered by the Depositary to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or from time to time in part, for definitive Securities of such series without charge, and the Trustee shall authenticate and make available for delivery, in exchange for each portion of such temporary Global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary Global Security to be exchanged.

Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities.

Section 2.09 Mutilated, Destroyed, Lost or Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the destruction, loss or theft of any Security and (b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall, subject to the following paragraph, execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

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

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

The provisions of this Section 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 2.10 Cancellation.

All Securities surrendered for payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, as the case may be, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee. All Registered Securities so delivered shall be promptly cancelled by the Trustee, upon written request of the Company. The Company may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section except as expressly provided by this Indenture. Any cancelled Securities

held by the Trustee shall be disposed in accordance with its then customary procedures and, upon written request of the Company, the Trustee shall deliver to the Company a certificate of such disposal. The acquisition of any Securities by the Company shall not operate as a redemption or satisfaction of the Indebtedness represented thereby unless and until such Securities are surrendered to the Trustee for cancellation.

Section 2.11 Book-Entry Only System.

If specified by the Company pursuant to Section 2.03(b) with respect to Securities represented by a Security in global form, a series of Securities may be issued initially in book-entry only form and, if issued in such form, shall be represented by one or more Securities in global form registered in the name of the Depository or other depository designated with respect thereto. So long as such system of registration is in effect, (a) Securities of such series so issued in book-entry only form will not be issuable in the form of or exchangeable for Securities in certificated or definitive registered form, (b) the records of the Depository or such other depository will be determinative for all purposes and (c) neither the Company, the Trustee nor any paying agent, Security Registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the Depository, or such other depository, as the case may be.

Members of, or participants in, the Depository shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever.

**ARTICLE 3
REDEMPTION OF SECURITIES**

Section 3.01 Redemption of Securities; Applicability of Section.

Redemption of Securities of any series as permitted or required by the terms thereof shall be made in accordance with the terms of such Securities as specified pursuant to Section 2.03(b) hereof and this Article; *provided, however*, that if any provision of any series of Securities shall conflict with any provision of this Section, the provision of such series of Securities shall govern.

Section 3.02 Notice of Redemption; Selection of Securities.

In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of a series of Securities pursuant to Section 3.01, it shall fix a date for redemption. 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 written request, by the Trustee in the name and at the expense of the Company. The Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, on that date prior to the date fixed for a redemption to the holders of such Securities so to be redeemed, as a whole or in part,

(a) as set forth in Board Resolutions, as described in Section 2.03, or (b) as determined by the Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President of the Company (each, an “**Authorized Officer**”) and evidenced by the preparation of an offering document or an Officers’ Certificate specifying the period of notice of such redemption. If the Board Resolutions or an Authorized Officer do not specify a longer period of notice of such redemption, the Company or, at the written request of the Company, the Trustee, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, at least ten Business Days and not more than 60 calendar days prior to the date fixed for a redemption to the holders of such Securities so to be redeemed as a whole or in part. Notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice or any defect in the notice to the holder of any such Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other such Security. If the Company requests the Trustee to give any notice of redemption, it shall make such request in writing in an Officers’ Certificate delivered to the Trustee at least ten days prior to the designated date for delivering such notice, unless a shorter period is satisfactory to the Trustee.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which such Securities are to be redeemed, the CUSIP numbers of such Securities, the Place of Payment where such Securities maturing after the date of redemption, are to be surrendered for payment of the redemption prices, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in the notice, and that on and after the date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all of a series is to be redeemed, the notice of redemption shall specify the numbers of the Securities to be redeemed. In case any Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit in trust with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities or portions of Securities so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. If less than all of a series of Securities is to be redeemed, the Company will give the Trustee adequate written notice at least 45 days in advance (unless a shorter notice shall be satisfactory to the Trustee) as to the aggregate principal amount of Securities to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, pro rata or by lot or in such other manner as it shall deem appropriate and fair, not more than 60 days prior to the date of redemption, the numbers of such Securities Outstanding not previously called for redemption, to be redeemed in whole or in part. The portion of principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company of the Securities to be redeemed. If, however, less than all the Securities of a series having differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular Securities of such series to be redeemed and shall notify the Trustee in writing at least 45 days prior to the relevant redemption date.

Section 3.03 Payment of Securities Called for Redemption.

If notice of redemption has been given as above provided, the Securities or portions of Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after that date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to that date) interest on such Securities or portions of Securities so called for redemption shall cease to accrue. On presentation and surrender of such Securities subject to redemption at the Place of Payment and in the manner specified in such notice, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that unless otherwise specified as contemplated by Section 2.03, installments of interest on Registered Securities whose stated maturity date is on or prior to the date of redemption shall be payable to the holders of such Registered Securities, or one or more predecessor Securities, registered as such at the close of business on the relevant record dates according to their terms and the provisions of Section 2.05.

At the option of the Company, payment with respect to Registered Securities may be made by check to the holders of such Securities or other persons entitled thereto against presentation and surrender of such Securities.

Any Security that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or such holder's attorney duly authorized in writing), and upon such presentation, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the principal of the Security so presented. If a temporary Global Security or permanent Global Security is so surrendered, such new Security so issued shall be a new temporary Global Security or permanent Global Security, respectively.

Section 3.04 Redemption Suspended During Event of Default.

The Trustee shall not redeem any Securities (unless all Securities then outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default of which a Responsible Officer of the Trustee has actual knowledge or has received written notice thereof, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem such Securities, provided funds are deposited with it for such purpose. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the securityholders and applied in the manner set forth in Section 6.06; *provided, however*, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 Payment of Principal, Premium and Interest.

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any, on) and any interest on each of the Securities of a series at the place, at the respective times and in the manner provided in the terms of the Securities and this Indenture.

Section 4.02 Offices for Notices and Payments.

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for such series an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served.

The Company will give to the Trustee notice of the location of each such office or agency and of any change in the location thereof. In case the Company shall fail to maintain any such office or agency as required, or shall fail to give such notice of the location or of any change in the location thereof, presentations and surrenders of Securities of that series may be made and notices and demands may be served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands.

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

The Company hereby initially designates the principal Corporate Trust Office of the Trustee as the office of the Company where Registered Securities may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served; *provided, however*, that the Trustee shall not be deemed an agent of the Company for service of legal process.

Section 4.03 Provisions as to Paying Agent.

(a) (a) Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold sums held by it as such agent for the payment of the principal of (and premium, if any, on) or any interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the persons entitled thereto until such sums shall be paid to such persons or otherwise disposed of as herein provided and will notify the Trustee of the receipt of sums to be so held;

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

(3) that at any time when any such failure has occurred and is continuing, it will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of (and premium, if any) or any interest on the Securities of any series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or any interest so becoming due until such sums shall be paid to such persons or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

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

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

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 12.03 and Section 12.04.

Section 4.04 Statement as to Compliance.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, commencing with the fiscal year ending in the year during which the first series of Securities is issued hereunder (but in no event more than one year from the issuance of the first series hereunder), an Officers' Certificate signed by the Chief Executive Officer, President, Chief Financial Officer, or other principal financial officer or principal accounting officer, or Controller of the Company, stating, as to each signer thereof, that:

(a) a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision; and

(b) to the best of his knowledge, based on such review, the Company has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

Section 4.05 Corporate Existence.

Subject to the provisions of Article 11, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises and the corporate existence and rights (charter and statutory) and franchises of its Subsidiaries; provided, that except as set forth in Section 4.06 below, the Company shall not be required to, or to cause any Subsidiary to, preserve any right or franchise or to keep in full force and effect the corporate existence of any Subsidiary if the Company shall determine that the keeping in existence or preservation thereof is no longer desirable in or consistent with the conduct of the business of the Company.

Section 4.06 Reserved.

Section 4.07 Waiver of Covenants.

The Company may omit in any particular instance to comply with any covenant or condition set forth herein if before or after the time for such compliance the holders of a majority in principal amount of the Securities of all series affected thereby then Outstanding shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver 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 in respect of any such covenant or condition shall remain in full force and effect.

Section 4.08 Notice of Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate signed by its Chief Executive Officer, President, Chief Financial Officer, or other principal financial officer or principal accounting officer, or Controller of the Company, stating whether or not to the best knowledge of the signor thereof, the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

ARTICLE 5
SECURITYHOLDER LISTS AND REPORTS
BY THE COMPANY AND THE TRUSTEE

Section 5.01 Securityholder Lists.

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee (1) semiannually, within 15 days before each record date when any Securities of a series are Outstanding, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of such Registered Securities as of such date, and (2) at such other times as the Trustee may request in writing, within 10 days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of Registered Securities of a particular series specified by the Trustee as of a date not more than 15 days prior to the time such information is furnished; provided, however, that if and so long as the Trustee shall be the Security Registrar with respect to such series, such list shall not be required to be furnished.

Section 5.02 Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities contained in the most recent list furnished to it as provided in Section 5.01 or received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other securityholders with respect to their rights under this Indenture or under the Securities. The Company, the Trustee, the Security Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to the sending of any material pursuant to a request made pursuant to Section 312(b) of the Trust Indenture Act.

Section 5.03 Reports by the Company.

The Company covenants so long as Securities are Outstanding:

(a) To file with the Trustee and the Commission, and transmit to holders, copies of such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided, that with respect to any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, the Company intends to file such information, documents or reports with the Commission in electronic form in accordance with Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, will constitute delivery by the Company of such reports to the Trustee and holders in compliance with the Trust Indenture Act; and

(b) Notwithstanding anything to the contrary herein, the Trustee will have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee in accordance with this Section 5.03 will be solely for the purposes of compliance with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents (whether or not filed in electronic form) is for informational purposes only and the Trustee's receipt of such will not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee shall have no liability or responsibility for the filing, content or timelines of any report hereunder aside from any report transmitted under this Indenture.

Section 5.04 Reports by the Trustee.

(a) Within 60 days after [•] of each year commencing with the first [•] following the first issuance of Securities pursuant to Section 2.01, so long as any Securities are outstanding hereunder and if there has been any change in the following, the Trustee shall transmit by mail, first-class postage prepaid, to the securityholders, as their names appear upon the Security Register, a brief report dated as of such [•] with respect to any of the events specified in Section 313(a) and Section 313(b)(2) of the Trust Indenture Act that may have occurred since the later of the immediately preceding [•] and the date of this Indenture.

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

(c) The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

(d) Reports under this Section will be transmitted in the manner and to the Persons required by Section 313(c) and Section 313(d) of the Trust Indenture Act. The Company agrees to notify the Trustee when any Securities become listed on any stock exchange.

**ARTICLE 6
REMEDIES**

Section 6.01 Events of Default; Acceleration of Maturity.

In case one or more of the following Events of Default with respect to a particular series shall have occurred and be continuing:

(a) default in (a) the payment of the principal of (or premium, if any, on) any of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise or (b) any payment required by any sinking or analogous fund established with respect to that series; or

(b) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Securities or in this Indenture for a period of 90 days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Securities of that series at the time Outstanding; or

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

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

(f) any other Event of Default provided with respect to Securities of that series, then, if an Event of Default described in clause (a), (b), (c), or (f) shall have occurred and be continuing, and in each and every such case, unless the principal amount 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% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders) may declare the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding; or, if an Event of Default described in clause (d) or (e) shall have occurred and be continuing, 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% in aggregate principal amount of all the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders), may declare the principal of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities contained to the contrary notwithstanding.

Section 6.02 Rescission and Annulment.

The provisions in Section 6.01 are subject to the condition that if, at any time after the principal of the Securities of any one or more of all series, as the case may be, shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series or of all the Securities, as the case may be, and the principal of (and premium, if any, on) all Securities of such series or of all the Securities, as the case may be (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities), which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any) and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities of such series or all Securities, as the case may be (or, with respect to Original Issue Discount Securities, at the rate specified in the terms of such Securities for interest on overdue principal thereof upon maturity, redemption or acceleration of such series, as the case may be), to the date of such payment or deposit, and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or willful misconduct, and any and all defaults under the Indenture, other than the non-payment of the principal of Securities that has become due by acceleration, shall have been remedied; then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series or with respect to all Securities, as the case may be in such case, treated as a single class and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

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

Section 6.03 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(a) a default is made in the payment of any installment of interest on any Security when such interest becomes due and payable and such default continues for a period of 90 days, or

(b) default is made in the payment of the principal or premium, if any, of any Security at the maturity thereof, including any maturity occurring by reason of a call for redemption or otherwise, the Company will, upon demand of the Trustee, pay to it, for the benefit of the holders of such Securities, the whole amount that shall have become due and payable on such Securities for principal or premium, if any, and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by such Securities; 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.

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 proceedings to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the securityholders 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 6.04 Trustee May File Proofs of Claim.

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

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

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each holder of Securities to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders of Securities, 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 7.06. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the holders of the Securities may be entitled to receive in such proceedings, whether in liquidation or under any plan or reorganization or arrangements or otherwise.

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

Section 6.05 Trustee May Enforce Claims Without Possession of Securities.

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

Section 6.06 Application of Money Collected.

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

FIRST: To the payment of all amounts due the Trustee under Section 7.06 or Section 14.05;

SECOND: To the payment of all senior Indebtedness of the Company if and to the extent required by Article 16;

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

FOURTH: To the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 6.07 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;
- (b) the holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such holder or holders have offered to the Trustee 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 proceedings; 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;
- (f) it being understood and intended that no one or more such holders of Securities shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such holders of Securities or to obtain or to seek to obtain priority or preference over any other of such holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such holders of Securities.

Section 6.08 Unconditional Right of Securityholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, the holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 2.05 and Section 3.02) any interest on such Security on the respective stated maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such holder.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such holder, then and in every such case the Company, the Trustee and the holders of Securities 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 holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as provided in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 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 Default shall impair any such right or remedy or constitute a waiver of any such Default or acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders of Securities, as the case may be.

Section 6.12 Control by Securityholders.

The holders of a majority in principal amount of Outstanding Securities of each 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, provided that

- (a) such direction shall not be in conflict with any statute, rule of law or with this Indenture;
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(c) the Trustee need not take any action which it in good faith determines might involve it in personal liability or be unjustly prejudicial to the securityholders not consenting (provided, however, that the Trustee shall not have an affirmative obligation to determine whether such action is unduly prejudicial to the securityholders not consenting).

Upon receipt by the Trustee of any such direction with respect to Securities of a series all or part of which is represented by a temporary Global Security or a permanent Global Security, the Trustee shall establish a record date for determining holders of Outstanding Securities of such series entitled to join in such direction, which record date shall be at the close of business on the day the Trustee receives such direction. The holders on such record date, or their duly designated proxies, and only such persons, shall be entitled to join in such direction, whether or not such holders remain holders after such record date, *provided* that, unless such majority in principal amount shall have been obtained prior to the day which is 90 days after such record date, such direction shall automatically and without further action by any holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a holder, or a proxy of a holder, from giving, after expiration of such 90-day period, a new direction identical to a direction which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 6.12.

Section 6.13 Waiver of Past Defaults.

The holders of a majority in principal amount of the Securities of each series at the time Outstanding may, on behalf of the holders of all the Securities of that series, waive any past default hereunder and its consequences, except a default:

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

(b) in respect of a covenant or provision hereof that pursuant to Article 10 cannot be modified or amended without the consent of the holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Default or 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 6.14 Undertaking for Costs.

All parties to this Indenture agree, and each holder of any Security by holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any holder of any Securities for the enforcement of the payment of the principal of, premium, if any, or any interest on any Security on or after the respective stated maturities expressed in such Security (or, in the case of redemption, on or after the redemption date, except, in the case of a partial redemption, with respect to the portion not so redeemed).

Section 6.15 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 laws 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 benefits 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 7
CONCERNING THE TRUSTEE**

Section 7.01 Duties and Responsibilities of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default of a particular series and after the curing of all Events of Default of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against

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

(b) In case an Event of Default with respect to a particular series has occurred (which has not been cured), the Trustee shall exercise with respect to 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 provisions of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) prior to the occurrence of an Event of Default with respect to a particular series and after the curing of all Events of Default with respect to such series which may have occurred, the duties and obligations of the Trustee with respect to such series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee;

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

(3) 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 Securities pursuant to Section 6.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(d) No provision of this Indenture shall be construed as requiring the Trustee to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if 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.

Section 7.02 Reliance on Documents, Opinions, etc.

Subject to the provisions of Section 7.01:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, judgement, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties not only as to the due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained herein. The Trustee need not investigate any fact or matter stated in the document;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or any Assistant Secretary of the Company; and 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 and/or Opinion of Counsel;

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

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

(e) 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, note, coupon or other paper or documents, 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;

(f) 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;

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

(h) in no event will the Trustee be responsible or liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(i) in no event will the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, pandemics, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, sabotage, epidemics, riots,

nuclear or natural catastrophes, earthquakes, fires, floods, or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services, labor disputes, acts of civil or military authorities and governmental actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee will use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers hereunder;

(k) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture; and

(l) the permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable other than for its negligence or willful misconduct.

Section 7.03 No Responsibility for Recitals, etc.

The recitals contained herein and in the Securities, other than the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 7.04 Ownership of Securities.

The Trustee, any authenticating agent, any paying agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, authenticating agent, paying agent, Security Registrar or such other agent of the Company or of the Trustee.

Section 7.05 Moneys to be Held in Trust.

Subject to the provisions of Section 12.04 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held un-invested in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon.

Section 7.06 Compensation and Expenses of Trustee.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder as agreed in writing between the Company and the Trustee (which to the extent permitted by law shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee forthwith upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or willful misconduct. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make and to be reimbursed for, advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify each of the Trustee and any predecessor Trustee for, and to hold it harmless against, any and all loss, damage, claims, suit, liability or expense, (including attorney's fees and expenses, and taxes (other than taxes based upon, measured or determined by, the income of the Trustee)) incurred without negligence or willful misconduct on the part of the Trustee, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability, whether asserted by the Company, a Holder or any other person. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

To secure the Company's obligations under this Section, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except that held in trust to pay principal of (and premium, if any) and interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The provisions of this Section shall survive the resignation or removal of the Trustee and the termination of this Indenture.

Section 7.07 Officers' Certificate or Opinion of Counsel as Evidence.

Subject to the provisions of Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate or Opinion of Counsel delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 Disqualifications; Conflicting Interest of Trustee.

If the Trustee has or shall acquire any “conflicting interest” within the meaning of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.09 Eligibility of Trustee.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, (c) shall have at all times a combined capital and surplus of not less than \$50,000,000 and (d) shall not be the Company or any person directly or indirectly controlling, controlled by, or under common control with the Company. 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, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

Section 7.10 Resignation or Removal of Trustee.

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series by giving written notice of resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section 7.08 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 or Securities of such series for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 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

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any securityholder of such series who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of all series (voting as one class) at the time Outstanding may at any time remove the Trustee with respect to Securities of all series and appoint a successor trustee with respect to the Securities of all series.

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

Section 7.11 Acceptance by Successor Trustee.

Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the predecessor trustee shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the predecessor trustee. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee, including the initial Trustee, ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

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

No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be qualified and eligible under the provisions of this Article 7.

Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall mail notice of the succession of such trustee hereunder to all holders of Securities of any applicable series as the names and addresses of such holders shall appear on the registry books. If the Company fails to mail such notice in the prescribed manner within ten days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so mailed at the expense of the Company.

Section 7.12 Successor by Merger, etc.

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 such corporation shall be qualified and eligible under the provisions of this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 7.13 Limitations on Rights of Trustee as Creditor.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

Section 7.14 Notice of Default.

Within 90 days after the occurrence of any default on a series of Securities hereunder of which a Responsible Officer of the Trustee has received notice or is deemed to have notice in accordance with this Section 7.14, the Trustee shall transmit to all securityholders of that series, in the manner and to the extent provided in Section 15.04, notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; *provided, however*, that except in the case of a default in the payment of the principal of or interest on any Security or on the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determine that the withholding of such notice is in the interests of the securityholders; and provided, further, that in the case of any default of the character specified in clause (c) of Section 6.01 no such notice to securityholders shall be given until at least 30 days after the occurrence thereof. The Trustee will not be required to take notice or be deemed to have notice of any default or Event of Default, except failure by the Company to pay or cause to be made any of the payments required to be made to the Trustee, unless a Responsible Officer shall receive written notice of such default or Event of Default from the Company or by the holders of at least 25% in aggregate principal amount of the then Outstanding Securities delivered to the Corporate Trust Office of the Trustee and such notice states that it is a notice of a default or Event of Default with respect to the Securities and this Indenture, and in the absence of such notice so delivered the Trustee may conclusively assume no default or Event of Default exists. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 7.15 Appointment of Authenticating Agent.

The Trustee may appoint an authenticating agent or agents (which may be an affiliate or affiliates of the Company) with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue or upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.09, 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 or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers or to otherwise act as authenticating agent, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (c) shall have at all times a combined capital and surplus of not less than \$50,000,000. If such authenticating agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such authenticating agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, such authenticating agent shall resign immediately in the manner and with the effect specified in this Section.

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

An authenticating agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an authenticating agent by giving written notice thereof to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor authenticating agent which shall be acceptable to the Company and shall promptly give notice of such appointment to all holders of Securities in the manner and to the extent provided in Section 15.04. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each authenticating agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 7.06.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

_____, as Authenticating Agent

By:

Authorized Signatory

If all of the Securities of a series may not be originally issued at one time, and the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing, shall appoint in accordance with this Section an authenticating agent (which, if so requested by the Company, shall be such affiliate of the Company) having an office in a Place of Payment designated by the Company with respect to such series of Securities, *provided* that the terms and conditions of such appointment are acceptable to the Trustee.

**ARTICLE 8
CONCERNING THE SECURITYHOLDERS**

Section 8.01 Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any authorization, notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by securityholders in person or by agent or proxy appointed in writing, or (b) by a combination of such instrument or instruments and any such record of such a meeting of securityholders.

In determining whether the holders of a specified percentage in aggregate principal amount of the Securities of any or all series have taken any action (including the making of any demand or request, the giving of any authorization, direction, notice, consent or waiver or the taking of any other action), (i) the principal amount of any Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable upon an Event of Default pursuant to the terms of such Original Issue Discount Security at the time the taking of such of such action is evidenced to the Trustee, and (ii) the principal amount of a Security denominated in a foreign currency or currency unit shall be the Dollar equivalent, determined as of the date of original issuance of such Security in accordance with Section 2.03(b) hereof, of the principal amount of such Security.

Section 8.02 Proof of Execution by Securityholders.

Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a securityholder or its agent or proxy, or of the holding by any person of a Security, shall be sufficient and conclusive in favor of the Trustee and the Company if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

The principal amount and serial numbers of Registered Securities held by any person, and the date of holding the same, shall be proved by the Security Register.

The record of any securityholders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 Who Are Deemed Absolute Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name such Registered Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Registered Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon), for the purpose of receiving payment of or on account of the principal of (and premium, if any) and, subject to the provisions of Section 2.05 and Section 2.07, any interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Notwithstanding the foregoing, with respect to any temporary or permanent Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or of the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Depository, or impair, as between a Depository and holders of beneficial interests in any temporary or permanent Global Security, as the case may be, the operation of customary practices governing the exercise of the rights of the Depository as holder of such temporary or permanent Global Security.

Section 8.04 Company-Owned Securities Disregarded.

In determining whether the holders of the required aggregate principal amount of Securities have provided any request, demand, authorization, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 8.05 Revocation of Consents; Future Securityholders Bound.

At any time prior to the taking of any action by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security, the identifying number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action, may, by filing written notice with the Trustee at its office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security and of any Security issued upon registration of transfer of or in exchange or substitution therefor in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

Section 8.06 Record Date.

The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of holders of Securities of any series entitled to vote or consent to any action by vote or consent or to otherwise take any action under this Indenture authorized or permitted by Section 6.12 and Section 6.13 or otherwise under this Indenture. Such record date shall be the later of (i) the date 20 days prior to the first solicitation of such consent or vote or other action and (ii) the date of the most recent list of holders of such Securities delivered to the principal corporate trust office of the Trustee pursuant to Section 5.01 prior to such solicitation. If such a record date is fixed, those persons who were holders of such Securities at the close of business on such record date shall be entitled to vote or consent or take such other action, or to revoke any such action, whether or not such persons continue to be holders after such record date, and for that purpose the Outstanding Securities shall be computed as of such record date.

**ARTICLE 9
SECURITYHOLDERS' MEETINGS**

Section 9.01 Purposes of Meeting.

A meeting of holders of any or all series of Securities may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by securityholders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 9.02 Call of Meetings by Trustee.

The Trustee may at any time call a meeting of securityholders of any or all series to take any action specified in Section 9.01, to be held at such time and at such place in New York, New York as the Trustee shall determine. Notice of every meeting of the securityholders of any or all series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given in the manner provided in Section 15.04 not less than 20 nor more than 180 days prior to the date fixed for the meeting.

Section 9.03 Call of Meetings by Company or Securityholders.

In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of securityholders of any or all series to take any action authorized in Section 9.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have provided notice of such meeting in the manner provided in Section 15.04 within 30 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in New York, New York for such meeting and may call such meeting by giving notice thereof as provided in Section 9.02.

Section 9.04 Qualifications for Voting.

To be entitled to vote at any meeting of securityholders a person shall be a holder of one or more Securities of such series Outstanding with respect to which a meeting is being held or a person appointed by an instrument in writing as proxy by such a holder or holders. The only persons who shall be entitled to be present or to speak at any meeting of the securityholders of any series shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 Regulations.

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of securityholders of a series, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it deems fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Article 8 and the appointment of any proxy shall be proved in the manner specified in Article 8. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Article 8 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by securityholders as provided in Section 9.03, in which case the Company or the securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.01 and Section 8.04, at any meeting each securityholder or proxy shall be entitled to one vote for each \$1,000 (or the U.S. Dollar equivalent thereof in connection with Securities issued in a foreign currency or currency unit) Outstanding principal amount of Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote except as a securityholder or proxy. Any meeting of securityholders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time, and the meeting may be reconvened without further notice.

Section 9.06 Voting.

The vote upon any resolution submitted to any meeting of securityholders shall be by written ballot on which shall be subscribed the signatures of the securityholders or proxies and on which shall be inscribed the identifying number or numbers or to which shall be attached a list of identifying numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of securityholders shall be prepared by the secretary of the meeting and there shall be attached to the record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 9.02. The record shall be signed and verified by the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

**ARTICLE 10
SUPPLEMENTAL INDENTURES**

Section 10.01 Supplemental Indentures without Consent of Securityholders.

Without the consent of any holders of Securities, the Company, when authorized by or pursuant to Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, pursuant to Article 11 hereof, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company herein and in the Securities;

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors shall consider to be for the protection of the holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental indenture may provide;

(c) to establish any series of Securities and the form or terms of securities of any series as permitted by Section 2.01 and Section 2.03, including, without limitation, any subordination provisions and any conversion or exchange provisions applicable to Securities that are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding);

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

(e) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, covenant defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article 14, provided that any such action shall not adversely affect the interests of any holder of a Security of such series or any other Security in any material respect;

(f) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities, registrable or not registrable as to principal;

(g) to make provisions with respect to conversion or exchange rights of holders of Securities of any series;

(h) in the case of any series of Securities which are convertible into or exchangeable for commodities or for the securities of the Company to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding securities or any merger, consolidation, statutory share exchange or combination of the Company with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the properties and assets of the Company to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 2.03;

(i) to add to, delete from or revise the conditions, limitations or restrictions on issue, authentication and delivery of Securities of any series;

(j) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act, excluding however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act or any corresponding provision in any similar federal statute hereafter enacted;

(k) to modify, eliminate or add to any of the provisions of this Indenture, provided that any such change or elimination (i) shall become effective only when there is no Security of any series Outstanding and created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or (ii) shall not apply to any Security Outstanding;

(l) to conform the Indenture or the Securities to the description thereof in the related prospectus, offering memorandum or disclosure document (as provided in an Officers' Certificate delivered to the Trustee);

(m) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture;

(n) to add guarantees with respect to, or to secure, any series of Security;

(o) to evidence and provide for the acceptance and appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add or change any 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 7.11; and

(p) to make any change to the Securities of any series or to make any other provisions in regard to matters or questions arising under this Indenture that do not adversely affect the legal rights under this Indenture of any holder of Securities of any series issued under this Indenture, including provisions necessary or desirable to provide for or facilitate the administration of the trusts hereunder.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. No supplemental indenture shall be effective as against the Trustee unless and until the Trustee has duly executed and delivered the same.

Section 10.02 Supplemental Indentures with Consent of Holders.

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of all series at the time Outstanding affected by such supplemental indenture (voting as one class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) 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 such series under this Indenture; provided, that no such supplemental indenture shall (a) extend the fixed maturity of any Securities, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Security so affected, (b) reduce the aforesaid percentage of Securities, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all Securities then Outstanding, (c) modify the subordination provisions in a manner adverse to the holders of such Securities, or (d) modify any of the above provisions.

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

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article 10, the Company shall provide notice, in the manner and to the extent provided in Section 15.04, setting forth in general terms the substance of such supplemental indenture, to all holders of Securities of each series so affected. Any failure of the Company so to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 10.03 Compliance with Trust Indenture Act; Effect of Supplemental Indentures.

Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10 and subject to the provisions in any supplemental indenture relating to the prospective application of such instrument, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities theretofore or thereafter authenticated and delivered hereunder shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 7.01 and Section 7.02, shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article 10 and that all conditions precedent thereto have been satisfied.

Section 10.04 Notation on Securities.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. New Securities of any series so modified as to conform, in the opinion of the Company and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered, without charge to the securityholders, in exchange for the Securities of such series then Outstanding.

ARTICLE 11
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 11.01 Company May Consolidate, etc., on Certain Terms.

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (1) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such corporation, and (2) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

Section 11.02 Successor Corporation Substituted.

In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, 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 make available for delivery 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 thereof.

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.

Section 11.03 Opinion of Counsel and Officers' Certificate to be Given Trustee.

The Trustee shall receive an Opinion of Counsel and Officers' Certificate as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE 12
SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 12.01 Discharge of Indenture.

If at any time

(a) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than (i) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.09, and (ii) Securities 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 4.03), or

(b) all such Securities of such series not theretofore delivered to the Trustee for cancellation (i) shall have become due and payable, or (ii) are by their terms to become due and payable within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company in the case of (b)(i), (b)(ii) or (b)(iii) above shall deposit or cause to be deposited with the Trustee as trust funds the entire amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 12.04) sufficient to pay at maturity or upon redemption all Securities of such series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then this Indenture shall cease to be of further effect with respect to the Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company and subject to Section 15.05, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series or of all series, the obligations of the Company to the Trustee under Section 7.06 shall survive.

The Company will deliver to the Trustee an Officers' Certificate and an Opinion of Counsel which together shall state that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Section 12.02 Deposited Moneys to be Held in Trust by Trustee.

Subject to the provisions of clause (c) of Section 4.03, all moneys deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the persons entitled thereto, of all sums due and to become due thereon for principal and interest (and premium, if any) for which payment of such money has been deposited with the Trustee.

Section 12.03 Paying Agent to Repay Moneys Held.

In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series and the payment of all amounts due to the Trustee under Section 7.06, all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture 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 12.04 Return of Unclaimed Moneys.

Subject to applicable law, any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of (and premium, if any) or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal (and premium, if any, on) or interest shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on written request from the Company, and the holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

**ARTICLE 13
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS**

Section 13.01 Indenture and Securities Solely Corporate Obligations.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the holders thereof and as part of the consideration for the issue of the Securities.

**ARTICLE 14
DEFEASANCE AND COVENANT DEFEASANCE**

Section 14.01 Applicability of Article.

Unless, as specified pursuant to Section 2.03(b), provision is made that either or both of (a) defeasance of the Securities of a series under Section 14.02 and (b) covenant defeasance of the Securities of a series under Section 14.03 shall not apply to the Securities of a series, then the provisions of such Section 14.02 and Section 14.03, together with Section 14.04 and Section 14.05, shall be applicable to the Outstanding Securities of all series upon compliance with the conditions set forth below in this Article 14.

Section 14.02 Defeasance and Discharge.

Subject to Section 14.05, the Company may cause itself to be discharged from its obligations with respect to the Outstanding Securities of any series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**defeasance**”). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of holders of Outstanding Securities of such series to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments of the principal of and any premium and interest on such Securities when such payments are due, (b) the Company’s obligations with respect to such Securities under Section 2.07, Section 2.08, Section 2.09, Section 4.02 and Section 4.03 and such obligations as shall be ancillary thereto, (c) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder, and (d) this Article 14. Subject to compliance with this Article 14, defeasance with respect to Securities of a series by the Company is permitted under this Section 14.02 notwithstanding the prior exercise of its rights under Section 14.03 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

Section 14.03 Covenant Defeasance.

The Company may cause itself to be released from its obligations under any Sections applicable to Securities of a series that are determined pursuant to Section 2.03(b) to be subject to this provision with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**covenant defeasance**”). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, 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 Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

Section 14.04 Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions precedent or, as specifically noted below, subsequent to application of either Section 14.02 or Section 14.03 to the Outstanding Securities of such series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (i) money in an amount, or (ii) U.S. Government Obligations which through the scheduled payment of principal and interest 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

thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (i) the principal of and any premium and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (ii) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article 3 which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt;

(b) No default, or event that after notice or lapse of time, or both, would become a default with respect to the Securities of such series, shall have happened and be continuing (i) on the date of such deposit or (ii) insofar as Section 6.01(a) and Section 6.01(b) are concerned, at any time during the period ending on the 123rd 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 the condition in this clause (b) is a condition subsequent and shall not be deemed satisfied until the expiration of such period);

(c) Such defeasance or covenant defeasance shall not (A) cause the Trustee for the Securities of such series to have a conflicting interest as defined in Section 7.08 or for purposes of the Trust Indenture Act with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

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

(e) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) In the case of a defeasance under Section 14.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(g) In the case of covenant defeasance under Section 14.03, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(h) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.03(b); and

(i) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent and subsequent provided for in this Indenture relating to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03, as the case may be, have been complied with.

Section 14.05 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.04 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (but not including the Company acting as its own paying agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal and any premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.04 or the principal and interest received in respect thereof.

Anything herein 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. Government Obligations held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, provided that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Anything herein to the contrary notwithstanding, if and to the extent the deposited money or U.S. Government Obligations (or the proceeds thereof) either (i) cannot be applied by the Trustee in accordance with this Section because of a court order or by operation of Article 16 or (ii) are for any reason insufficient in amount, then the Company's obligations to pay principal of and any premium and interest on the Securities of such series shall be reinstated to the extent necessary to cover the deficiency on any due date for payment. In any such case, the Company's interest in the deposited money and U.S. Government Obligations (and proceeds thereof) shall be reinstated to the extent the Company's payment obligations are reinstated.

ARTICLE 15 MISCELLANEOUS PROVISIONS

Section 15.01 Benefits of Indenture Restricted to Parties and Securityholders.

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of senior Indebtedness).

Section 15.02 Provisions Binding on Company's Successors.

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

Section 15.03 Addresses for Notices, etc., to Company and Trustee.

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Indenture is duly given if in writing and delivered in person or delivered by first-class postage prepaid mail, facsimile, email or overnight air courier guaranteeing next day delivery, to the other's address:

(1) If to the Trustee, addressed to the Trustee at the principal Corporate Trust Office of the Trustee at [•], Attention: [•], Telephone: [•].

(2) If to the Company by the Trustee or by the holders of Securities, addressed to it at 756 East Winchester, Suite 100, Murray, Utah 84104, Attn: Chief Financial Officer.

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications will be deemed to have been duly given: five Business Days after being deposited in the mail, postage prepaid, if delivered by mail; on the first Business Day after being sent, if sent by facsimile and the sender receives confirmation of successful transmission; upon confirmation of transmittal (but excluding any automatic reply to such email), if sent by email; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Section 15.04 Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice of holders of Securities of any event, such notice shall be sufficiently given to holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each holder of a Registered Security affected by such event, at the address of such holder as it appears in the Security Register, not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to holders of Registered Securities by mail, then such notification as shall be made with the approval of the Trustee shall constitute sufficient notice to such holders for every purpose hereunder. In any case where notice to holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular holder of a Registered Security shall affect the sufficiency of such notice with respect to other holders of Registered Securities.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given when delivered to the Depositary for such Security (or its designee) pursuant to the customary procedures of such Depositary.

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

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language.

Section 15.05 Evidence of Compliance with Conditions Precedent.

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

Each Officers' Certificate and Opinion of Counsel provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 15.06 Legal Holidays.

In any case where the date of maturity of interest on or principal of the Securities or the date fixed for redemption of any Securities shall be a Saturday or Sunday or a legal holiday in New York, New York, or in such other place or places as the Company may designate pursuant to Section 4.02, or a day on which banking institutions in New York, New York, or in such other place or places are authorized by law or required by regulation or executive order to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 15.07 Trust Indenture Act to Control.

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

Section 15.08 Execution in Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page by facsimile or an email in PDF format shall have the same legal effect as the delivery of a signature page containing an original signature.

Section 15.09 Governing Law; Waiver of Jury Trial.

THIS INDENTURE AND EACH SECURITY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

The parties hereby (i) irrevocably submit to the non-exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan, the city of New York, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

Section 15.10 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.

The Trustee, by its execution of this Indenture, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth. This Indenture, any supplemental indenture hereto and the exhibits hereto or thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 15.11 Interpretations.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 15.12 USA PATRIOT Act.

The parties hereto acknowledge that in accordance with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

ARTICLE 16
RANKING OF SECURITIES

Section 16.01 Securities Subordinate to Senior Indebtedness.

Except as otherwise provided in a supplemental indenture or pursuant to Section 2.03, the Company agrees, and each holder by accepting a Security agrees, that the indebtedness evidenced by the Securities is subordinated in right of payment, to the extent and in the manner provided in this Article, to the prior payment in full of all senior Indebtedness and that the subordination is for the benefit of the holders of senior Indebtedness. Notwithstanding the foregoing, if a deposit is made pursuant to Section 14.02 or Section 14.03 with respect to any Securities (and provided all other conditions set out in Section 14.02 or 14.03, as applicable, shall have been satisfied with respect to such Securities), then, when the 90th day after such deposit has ended, no money obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of senior Indebtedness, including any such rights arising under this Article 16.

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

FINWISE BANCORP

By: _____

Name:
Title:

[•],
AS TRUSTEE

ATTEST:

By: _____

Name:
Title:

KIRTON | McCONKIE

November 18, 2025

Board of Directors
 FinWise Bancorp
 756 E. Winchester St.
 Suite 100
 Murray, UT 84107

Re: Securities Being Registered under Registration Statement on Form S-3

Dear Ladies and Gentlemen:

We have acted as counsel to FinWise Bancorp, a Utah corporation (the "Company"), in connection with the preparation and filing of the Company's Registration Statement on Form S-3 (the "Registration Statement") filed by the Company on November 18, 2025, with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to the proposed issuance and sale from time to time pursuant to Rule 415 under the Securities Act, as set forth in the Registration Statement, the prospectus contained therein (the "Prospectus") and one or more supplements to the Prospectus (each, a "Prospectus Supplement") and any free-writing prospectus(es), of up to \$150,000,000 in aggregate offering proceeds, of the following securities of the Company (collectively, the "Securities"):

1. shares of common stock, par value \$0.001 per share, of the Company (the "Common Stock");
2. shares of preferred stock, par value \$0.001 per share, of the Company (the "Preferred Stock");
3. one or more series of the Company's senior or subordinated debt securities (the "Debt Securities"), which may be issued pursuant to an indenture to be dated on or about the date of the first issuance of Debt Securities thereunder, but which may not be guaranteed by any affiliates of the Company or any other person, by and between a trustee to be selected by the Company (the "Trustee") and the Company, in the form of senior indenture filed as Exhibit 4.6 or form of subordinated indenture filed as Exhibit 4.7 to the Registration Statement and any applicable supplemental indenture therefor (the "Indenture");
4. warrants to purchase Common Stock or Preferred Stock or Debt Securities (the "Warrants"), which may be issued under warrant agreements (each, a "Warrant Agreement"), to be dated on or about the date of the first issuance of the applicable Warrants thereunder, by and between the Company and a warrant agent to be selected by the Company (the "Warrant Agent");
5. units consisting of two or more of the securities described in the prospective (namely, Common Stock, Preferred Stock, Debt Securities, Warrants, or Subscription Rights) (the "Units"), which may be issued under unit agreements (each, a "Unit Agreement"), to be dated on or about the date of the first issuance of the applicable Units thereunder, by and between the Company and the other parties thereto (the "Unit Parties");
6. subscription rights to purchase a specified number of whole shares of our common stock or debt securities for every share of our common stock or debt securities that the holder thereof owned on such record date (the "Subscription Rights").

We are delivering this opinion pursuant to the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

ATTORNEYS AT LAW
 www.kmclaw.com

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 801.328.3600 tel
 801.426.2100 tel

801.321.4893 fax
 801.321.4893 fax
 801.426.2101 fax

In connection with this opinion, we have examined and relied upon originals, or copies certified to our satisfaction, of such records, documents, certificates, opinions, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. As to certain factual matters, we have relied upon certificates of officers of the Company and have not independently sought to verify such matters.

In rendering this opinion, we have assumed (i) the genuineness and authenticity of all signatures on original documents; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to originals of all documents submitted to us as copies; (iv) the accuracy, completeness, and authenticity of certificates of public officials; (v) the due authorization, execution, and delivery of all documents where authorization, execution and delivery are prerequisites to the effectiveness of such documents; (vi) that the Registration Statement and any required post-effective amendment thereto have all become effective under the Securities Act and the Prospectus, any related Prospectus Supplement required by applicable laws and any and all free-writing prospectus(es) related to the offer and sale of the Securities have been delivered and filed as required by such laws; (vii) that the issuance and sale of the Securities do not violate any applicable law, are in conformity with the Company's then operative certificate of incorporation and bylaws, do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any applicable requirement or restriction imposed by any court or governmental body having jurisdiction over the Company or its properties or assets; (viii) the related Prospectus Supplement(s) will have been prepared and filed with the Commission describing the Securities offered thereby; and (ix) a definitive purchase, underwriting or similar agreement with respect to any Securities offered will have been duly authorized and validly executed and delivered by the Company and the other parties thereto, as applicable.

With respect to our opinion as to the Common Stock and Preferred Stock or other Securities convertible into, exercisable for, or including Common Stock or Preferred Stock, we have been advised by the Company and for purposes of this opinion we have assumed that, at the time of issuance and sale, a sufficient number of shares of Common Stock and/or Preferred Stock are authorized and available for issuance and that the consideration for the issuance and sale of the Common Stock and/or Preferred Stock (or for Debt Securities or Preferred Stock convertible into Common Stock, or for Warrants exercisable for Common Stock or Preferred Stock, or Units consisting of or including Common Stock or Preferred Stock) is in an amount that is not less than the par value of the Common Stock and/or Preferred Stock, as the case may be. We have also assumed with respect to the Debt Securities offered under the Registration Statement and the related Indenture, that such securities will be executed in the form filed as an exhibit to the Registration Statement other than any terms provided for in a supplemental indenture as permitted in the Indenture and that the Trustee under the Indenture shall have been qualified pursuant to the Trust Indenture Act of 1939 at the time the Debt Securities are offered or issued (or such later time as may be permitted pursuant to the rules, regulations, interpretations or positions of the Commission). We have also assumed with respect to Warrants offered under the Registration Statement, that such securities will be executed in the form filed as an exhibit to the Registration Statement. We have also assumed that with respect to any Securities being issued upon conversion of any convertible Debt Securities or Preferred Stock or upon exercise of any Warrants or relating to any Units, the applicable convertible Debt Securities or Preferred Stock or Warrants or Units will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance. We have also assumed with respect to the Warrants offered under the Registration Statement, that (a) such Warrants will be issued pursuant to a Warrant Agreement, (b) the Warrant Agreement will be filed either as an exhibit to an amendment to the Registration Statement to be filed after the date of this opinion or as an exhibit to a Current Report on Form 8-K to be filed after the Registration Statement has become effective, and (c) the particular terms of any series of Warrants will be set forth in a supplement to the prospectus forming a part of the Registration Statement. We have also assumed with respect to the Units offered under the Registration Statement, that (a) such Units will be issued pursuant to a Unit Agreement, (b) the Unit Agreement will be filed either as an exhibit to an amendment to the Registration Statement to be filed after the date of this opinion or as an exhibit to a Current Report on Form 8-K to be filed after the Registration Statement has become effective, and (c) the particular terms of any series of Units will be set forth in a supplement to the prospectus forming a part of the Registration Statement. We have also assumed with respect to the Subscription

Rights offered under the Registration Statement, that (a) such Subscription Rights will be issued pursuant to a Subscription Right Agreement, (b) the Subscription Right Agreement will be filed either as an exhibit to an amendment to the Registration Statement to be filed after the date of this opinion or as an exhibit to a Current Report on Form 8-K to be filed after the Registration Statement has become effective, and (c) the particular terms of any series of Subscription Rights will be set forth in a supplement to the prospectus forming a part of the Registration Statement.

Notwithstanding anything to the contrary, our opinion herein is expressed solely with respect to the federal laws of the United States, the Utah Revised Business Corporation Act (the "URBCA") and, as to the Debt Securities and Indentures, constituting valid and legally binding obligations of the Company, solely with respect to the laws of the State of New York. We express no opinion as to any provision of the Debt Securities that: (a) relates to the subject matter jurisdiction of any federal court of the United States of America or any federal appellate court to adjudicate any controversy related to the Debt Securities or (b) contains a waiver of an inconvenient forum. We express no opinion as to whether the laws of any jurisdiction are applicable to the subject matter hereof. We are not rendering any opinion as to compliance with any federal or state law, rule or regulation relating to securities, or to the sale or issuance thereof. We express no opinions concerning (i) the validity or enforceability of any provisions contained in indentures that purport to waive or not give effect to rights to notices, defenses, subrogation or other rights or benefits that cannot be effectively waived under applicable law; or (ii) the validity or enforceability of any provisions contained in Warrant Agreements or Unit Agreements or Subscription Agreements that purport to waive or not give effect to rights to notices, defenses, subrogation or other rights or benefits that cannot be effectively waived under applicable law.

On the basis of the foregoing and in reliance thereon, and subject to the qualifications herein stated, we are of the opinion that:

1. With respect to the Common Stock and Preferred Stock offered under the Registration Statement, provided that the issuance of the Common Stock and Preferred Stock has been duly authorized by all necessary corporate action on the part of the Company and duly delivered to the purchasers thereof against the requisite payment therefor, which the Company has received, the Common Stock and Preferred Stock, when issued and sold as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s) and any related free-writing prospectus(es) and in accordance with any applicable duly authorized, executed and delivered purchase, underwriting or similar agreement, or upon conversion of any convertible Debt Securities in accordance with their terms, or upon exercise of any Warrants or Subscription Rights in accordance with their terms, will be duly authorized, validly issued, fully paid and nonassessable.
2. With respect to any series of the Debt Securities issued under the Indenture and offered under the Registration Statement, provided that (i) the Indenture has been duly authorized by the Company and the Trustee by all necessary corporate action; (ii) the Indenture in substantially the form filed as an exhibit to the Registration Statement, has been duly executed and delivered by the Company and the Trustee; (iii) the terms of the Debt Securities and of their issuance and sale have been duly authorized by the Company by all necessary corporate action; (iv) the terms of the Debt Securities and of their issuance and sale have been duly established in conformity with the Indenture; and (v) the Debt Securities have been duly executed and delivered by the Company and authenticated by the Trustee pursuant to the Indenture and delivered against the requisite payment therefor, which the Company has received, then the Debt Securities, when issued and sold in accordance with the Indenture and as contemplated by the Registration Statement, the Prospectus and the related Prospectus Supplement(s), and a duly authorized, executed and delivered purchase, underwriting or similar agreement, will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, or upon exercise of any Warrants in accordance with their terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance.

3. With respect to the Warrants issued under a Warrant Agreement and offered under the Registration Statement, provided that (i) the Warrant Agreement has been duly authorized by the Company and the Warrant Agent by all necessary corporate action; (ii) the Warrant Agreement has been duly executed and delivered by the Company and the Warrant Agent as described in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (iii) the issuance and terms of the Warrants have been duly authorized by the Company by all necessary corporate action; and (iv) the Warrants have been duly executed and delivered by the Company and authenticated by the Warrant Agent pursuant to the Warrant Agreement and delivered against the requisite payment therefor, which the Company has received, and assuming that the Warrants are then issued and sold as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s), then the Warrants, when issued and sold in accordance with the Warrant Agreement and a duly authorized, executed and delivered purchase, underwriting or similar agreement, will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance.
4. With respect to the Units issued under a Unit Agreement and offered under the Registration Statement, provided that (i) the Unit Agreement has been duly authorized by the Company and the Unit Parties by all necessary corporate action; (ii) the Unit Agreement has been duly executed and delivered by the Company and the Unit Parties as described in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (iii) the issuance and terms of the Units have been duly authorized by the Company by all necessary corporate action; and (iv) the Units have been duly executed and delivered by the Company and authenticated by the Unit Parties pursuant to the Unit Agreement and delivered against the requisite payment therefor, which the Company has received, and assuming that the Units are then issued and sold as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s), then the Units, when issued and sold in accordance with the Unit Agreement and a duly authorized, executed and delivered purchase, underwriting or similar agreement, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief.
5. With respect to the Subscription Rights issued under a Subscription Right Agreement and offered under the Registration Statement, provided that (i) the Subscription Right Agreement has been duly authorized by the Company and the Subscription Right Parties by all necessary corporate action; (ii) the Subscription Right Agreement has been duly executed and delivered by the Company as described in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (iii) the issuance and terms of the Subscription Rights have been duly authorized by the Company by all necessary corporate action; and (iv) the Subscription Rights have been duly exercised and tendered by the Subscription Right Parties pursuant to the Subscription Right Agreement and delivered against the requisite payment therefor, which the Company has received, and assuming that the Subscription Rights are then issued as contemplated in the Registration Statement, the Prospectus and the related Prospectus Supplement(s), then the Subscription Rights, when issued in accordance with the Subscription Right Agreement and a duly authorized, executed and delivered purchase, underwriting or similar agreement, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief.

The foregoing opinions are qualified to the extent that the enforceability of any document, instrument or the Securities may be limited by or subject to bankruptcy, insolvency, fraudulent transfer or conveyance, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally, and general equitable or public policy principles.

We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s). In giving such consent, we do not believe that we are "experts" within the meaning of such term as used in the Securities Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very sincerely yours,

/s/ Kirton McConkie P.C.
Kirton McConkie

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-3 of FinWise Bancorp of our report dated March 26, 2025, relating to the consolidated financial statements of FinWise Bancorp (the “Company”), appearing in the Annual Report on Form 10-K of the Company for the year ended December 31, 2024, filed with the Securities and Exchange Commission. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ Baker Tilly US, LLP

Everett, Washington
November 18, 2025

