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

**AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Matrix Service Company

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

73-1352174
(I.R.S. Employer
Identification No.)

**10701 E. Ute Street
Tulsa, Oklahoma 74116-1517
(918) 838-8822**

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

With a copy to:

**George L. Austin
Vice President
10701 E. Ute Street
Tulsa, Oklahoma 74116-1517
(918) 838-8822**

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

**Larry Sandel, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 S. Boston Ave., Suite 400
Tulsa, Oklahoma 74103
(918) 594-0400
Facsimile: (918) 594-0505**

Approximate date of commencement of proposed sale to the public: *From time to time or at one time after the effective date of the Registration Statement as the Registrant shall determine.*

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

If any of the Securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, 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 of 1933, please check the following box and list the Securities Act registration 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 of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

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

We hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until we shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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 we are not soliciting offers to buy these securities, in any state where the offer or sale is not permitted.

Subject to Completion, dated October 12, 2004

PROSPECTUS

\$125,000,000

MATRIX SERVICE COMPANY

Common Stock

Preferred Stock

Debt Securities

Warrants

We may offer up to \$125,000,000 of our common stock, preferred stock, debt securities or warrants from time to time.

Each time we sell securities, we will provide you with the specific terms of the securities being offered in one or more prospectus supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities.

Our common stock is listed on the Nasdaq National Market under the symbol "MTRX." On October 8, 2004, the last reported sale price of our common stock on the Nasdaq National Market was \$3.98 per share.

The securities may be sold directly by us, through dealers or agents designated from time to time, to or through underwriters or through a combination of these methods. We reserve the sole right to accept, and together with our dealers or agents, from time to time, to reject in whole or in part any proposed purchase of the securities to be made directly or through dealers or agents. See "Plan of Distribution" beginning on page 33 of this prospectus. If any agents, underwriters or dealers are involved in the sale of any securities, we will disclose their names and any applicable fees, commissions or discounts in a prospectus supplement. Each prospectus supplement will provide the terms of the plan of distribution relating to the securities covered by that prospectus supplement.

We will not use this prospectus to offer or sell any securities unless it is accompanied by a prospectus supplement.

Investing in the securities involves risks. See "Risk Factors" beginning on page 5 of this prospectus.

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

The date of this prospectus is _____, 2004

TABLE OF CONTENTS

	<u>Page</u>
About This Prospectus	3
Forward-Looking Statements	4
Our Company	4
Risk Factors	5
Ratio of Earnings to Fixed Charges	16
Use Of Proceeds	16
Legal Ownership Of Securities	17
Description Of Common Stock We May Offer	17
Description Of Preferred Stock We May Offer	20
Description Of Debt Securities We May Offer	21
Description Of Warrants We May Offer	31
Plan Of Distribution	33
Legal Matters	36
Experts	36
Disclosure of Commission Position On Indemnification For Securities Act Liabilities	36
Where You Can Find More Information	36
Signatures	II-4

ABOUT THIS PROSPECTUS

This document is called a prospectus and is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC, using a “shelf” registration or continuous offering process. Under this shelf process, we may, from time to time, sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$125,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of the securities we are offering. That prospectus supplement may include a discussion of any risk factors or other special considerations that apply to those securities. The prospectus supplement also may add, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in that prospectus supplement.

The registration statement containing this prospectus, including exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus and any prospectus supplement. We have filed and plan to continue to file other documents with the SEC that contain information about us and our business. Also, we will file legal documents that control the terms of the securities offered by this prospectus as exhibits to the reports that we file with the SEC. The registration statement and other reports can be read at the SEC Web site or at the SEC offices mentioned under the heading “Where You Can Find More Information.”

You should rely only on the information provided in this prospectus and any applicable prospectus supplement, including the information incorporated by reference. Neither we, nor any underwriters, dealers or agents, have authorized anyone to provide you with different information.

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to “Matrix Service Company”, “Matrix”, “we”, “us”, “our”, or similar references mean Matrix Service Company and its subsidiaries on a consolidated basis.

FORWARD-LOOKING STATEMENTS

This prospectus, including the documents incorporated by reference in this prospectus, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We have based these forward-looking statements on our current expectations and projections about future events. Our actual results could differ materially from those discussed in, or implied by, these forward-looking statements. Forward-looking statements are identified by words such as “believe,” “anticipate,” “expect,” “intend,” “plan,” “will,” “may,” “estimate” and other similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements.

Any or all of our forward-looking statements in this prospectus and the documents incorporated by reference herein, and in any other public statements we make may turn out to be wrong. Forward-looking statements reflect our current expectations and are inherently uncertain. Inaccurate assumptions we might make and known or unknown risks and uncertainties can affect the accuracy of our forward-looking statements. Consequently, no forward-looking statement can be guaranteed and our actual results may differ materially. Some important factors that could cause actual results to differ materially from those suggested by the forward-looking statements include those described under “Risk Factors,” elsewhere in this prospectus as well as those contained in documents incorporated by reference into this prospectus:

We are not obligated to update or revise these forward-looking statements to reflect new events or circumstances. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

OUR COMPANY

We provide construction services and repair and maintenance services principally to the power and petroleum related industries, which includes facilities for the generation (fossil, hydro, and nuclear) and transmission of power, petroleum refineries and petroleum and natural gas products storage, terminals and pipelines. We believe that we excel as a full-service contractor, providing our clients with superior service through qualified professionals, technical expertise, skilled craftsmen, and excellent project management. Our construction services include turnkey/grassroots projects, plant expansions/relocations, terminals/bulk storage facilities, new tank construction, heavy hauling, American Society of Mechanical Engineers code work/welding, rigging, and millwrighting. Our repair and maintenance services include plant maintenance, turnaround services, outages, industrial cleaning, hydroblasting, substation and aboveground storage tank repair/maintenance.

We are a Delaware corporation. Our principal offices are located at 10701 E. Ute St., Tulsa, Oklahoma 74116-1517. Our telephone number is (918) 838-8822. Our internet web site address is <http://www.matrixservice.com>. Information on our web site is not part of this prospectus.

RISK FACTORS

Before making any decision to invest in our securities, you should carefully consider the following factors in addition to the other information contained in this prospectus, including information incorporated by reference in this prospectus. If any of the following risks actually occur, it could have a material adverse effect upon our business, financial condition and results of operations. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also occur and cause a material adverse effect upon our business, financial condition and results of operations. As a result, the trading price or value of our securities could decline, and you could lose part or all of your investment.

Risks Relating To Our Business

Demand for our products and services is cyclical and is vulnerable to downturns in the industries and markets which we serve as well as conditions in the general economy.

The demand for our products and services depends significantly upon the existence of construction and repair and maintenance projects in the power and petroleum related industries in the United States and Canada. These projects may relate to power generation and transmission facilities, petroleum refineries and petroleum and natural gas products storage facilities, terminals and pipelines. Together, these industries accounted for approximately 99%, 98% and 97% of our total revenues for our fiscal years ended May 31, 2002, May 31, 2003 and May 31, 2004, respectively. Power industry related revenues account for approximately 55% of our total revenues in fiscal year 2004, as compared to approximately 24% in fiscal year 2003, primarily due to large power projects performed during 2004 that were assumed in connection with the Hake Acquisition in March 2003.

These markets historically have been, and likely will continue to be, cyclical in nature and vulnerable to general downturns in the United States and Canadian economies, which could adversely affect the demand for our products and services. Occasionally, the timing of the demand for our products and services in certain of these markets, such as power generation facilities and petroleum refineries, can also be adversely affected during periods of strong economic growth as customers may postpone closing their facilities for maintenance, repair, turnaround or expansion projects while demand for their products remains high.

As a consequence of these and other factors, our results of operations have varied and are likely to continue to vary significantly depending on the demand for future projects from these industries.

Our results of operations depend upon the award of new contracts and the timing of those awards.

Our revenues are derived primarily from contracts awarded to us on a project-by-project basis. Generally, it is very difficult to predict whether and when we will be awarded a new contract since each potential contract typically involves a lengthy and complex bidding and selection process that may be affected by a number of factors, including changes in existing or assumed market conditions, financing arrangements, governmental approvals and environmental matters. Because our revenues are derived primarily from these contracts, our results of operations and cash flows can fluctuate materially from period to period depending on the timing of contract awards.

Uncertainties associated with the timing of contract awards also can increase our cost of doing business. For example, we may decide to maintain and bear the cost of a workforce in excess of our current contract needs in anticipation of future contract awards. If an expected contract award is delayed or not received, we could incur costs in maintaining an idle workforce that may have a material adverse effect on our results of operations.

[Table of Contents](#)

The terms of our contracts could expose us to absorbing unforeseen costs and costs not within our control, which may not be recoverable and could adversely affect our business and financial results.

While the percentages may vary from period to period, over the long term, approximately 50% of our revenues have been derived from fixed-price contracts and 50% from cost-plus contracts. We expect this ratio to continue. Under fixed-price contracts, we agree to perform the contract for a fixed-price and, as a result, can realize our expected profit or improve our expected profit by superior contract performance, productivity, worker safety and other factors resulting in costs savings. However, we could incur cost over-runs above the approved contract price, which may not be recoverable. Under certain incentive fixed-price contracts, we share with the customer any savings we are able to generate or any increased costs we may incur up to a negotiated or target ceiling. When costs exceed the negotiated ceiling price, we may be required to absorb some or all of the cost over-runs.

Fixed-price contract prices are established based in large part upon estimates and assumptions relating to project scope and specifications. These estimates and assumptions may prove inaccurate or conditions may change, sometimes due to factors not within our control, resulting in cost over-runs we are required to absorb that could have a material adverse effect on our business, financial condition and results of our operations. In addition, our profits from these contracts could decrease and we could experience losses if we incur difficulties in performing the contracts or are unable to secure fixed-pricing commitments from our manufacturers, suppliers and subcontractors at the time we enter into fixed-price contracts with our customers.

Under cost-plus contracts, we perform our services for agreed upon reimbursable costs and labor rates plus a profit, where the profit either is expressed as a percentage of our costs actually incurred for reimbursables and labor or is factored into the labor rate or cost of materials, if any, we are required to provide that are quoted in the contract. Some cost-plus contracts provide for the customer's review of the accounting and cost control systems used by us to calculate these labor rates and to verify the accuracy of the reimbursable costs invoiced. These reviews could result in reductions in amounts previously billed to the customer and in an adjustment to amounts previously reported by us as our profit on the contract.

Many of our contracts require us to satisfy specified progress milestones or performance standards in order to receive payment for the work completed or the equipment or supplies procured prior to achieving the applicable milestone or standard. As a result of these types of arrangements, we may incur significant costs or perform significant amounts of services prior to receipt of payment. If the customer decides not to complete the project or if the customer defaults on its payment obligations, we may be unable to collect amounts due to us for costs previously incurred or for amounts previously expended to purchase equipment or supplies. We may also find it necessary to terminate contracts between subcontractors and suppliers engaged by us to assist in performing the contract which may result in our incurring costs or penalties for canceling our commitments to them.

Many of our customers for power generation projects are project-specific entities that do not have significant assets other than their interests in the project and the credit worthiness of their parent entity which typically guarantees the obligations of the project-specific entity. It may be difficult for us to collect amounts owed to us by these customers and their more credit-worthy parent company. If we are unable to collect amounts owed to us for these matters, we may be required to record a charge against previously recognized earnings related to the project and our liquidity, financial condition and results of operations could be adversely affected.

We may encounter difficulties during the course of performing our contracts that may result in additional costs to us and reductions in our revenues and earnings that could have an adverse effect upon our financial results.

Many of our construction and repair and maintenance projects are performed over extended periods of time and often involve complex design and engineering specifications. These projects often require us to provide extensive project management, obtain machinery, equipment, materials and services from third parties or the customer and incur increased costs related to changes in project scope. We may encounter difficulties in obtaining these products and services on a timely basis. In some cases, these third-party products may not perform as expected or the services delivered may not meet contract specifications. These performance failures and other factors, some of which are beyond our control, may result in delays and additional costs to us including, in some cases, the cost of procuring alternate product or service providers, which may adversely impact our ability to complete a project on budget and in accordance with the original delivery schedule. To the extent these and the other matters referred to in

[Table of Contents](#)

the next paragraph arise, we may seek to recover from the responsible party any increased costs incurred by us; however, we cannot assure you that we will be successful in recovering all or a part of these costs in any or all circumstances.

In certain circumstances, we guarantee project completion or achievement of certain acceptance and performance testing levels by a scheduled date. Failure to meet schedule or performance requirements could result in additional costs to us, including the payment of contractually agreed liquidated damages. The amount of such additional costs could exceed our profit margins on the project. While we may seek to recover these amounts as claims from the supplier, vendor, subcontractor or other third party responsible for the delay or for providing non-conforming products or services, we cannot assure you that we will recover all or any part of these costs in all circumstances. Performance problems for existing and future projects could cause our actual results of operations to differ materially from those anticipated by us and could damage our reputation within our industry and our customer base.

Our use of percentage-of-completion accounting for fixed-price contracts and our reporting of profits for cost-plus contracts prior to contract completion could result in a reduction or elimination of previously reported profits.

A material portion of our revenues are recognized using the percentage-of-completion method of accounting. The percentage-of-completion accounting practices that we use result in our recognizing fixed-price contract revenues and earnings ratably over the contract term in the proportion that our actual costs bear to our estimated contract costs. The earnings or losses recognized on individual fixed-price contracts are based on estimates of contract revenues, costs and profitability. We review our estimates of contract revenues, costs and profitability on an on-going basis. Prior to contract completion, we may adjust our estimates on one or more occasions as a result of change orders to the original contract, collection disputes with the customer on amounts invoiced or claims against the customer for increased costs incurred by us due to customer-induced delays and other factors.

Contract losses are recognized in the fiscal period when the loss is determined. Contract profit estimates are also adjusted in the fiscal period in which it is determined that an adjustment is required. No restatements are made to prior periods. Further, a number of our contracts contain various cost and performance incentives and penalties that impact the earnings we realize from our contracts, and adjustments related to these incentives and penalties are recorded in the period when estimable or finalized, which is generally during the latter stages of the contract.

As a result of the requirements of the percentage-of-completion method of accounting, the possibility exists, for example, that we could have estimated and reported a profit on a contract over several prior periods and later determined, usually near contract completion, that all or a portion of such previously estimated and reported profits were overstated. If this occurs, the full aggregate amount of the overstatement will be reported for the period in which such determination is made, thereby eliminating all or a portion of any profits from other contracts that would have otherwise been reported in such period or even resulting in a loss being reported for such period.

Our financial loss exposure on cost-plus contracts is generally limited to a portion of our profit on the contract. However, it is possible that the customer could successfully dispute the costs we believe we incurred on the contract or assert that our costs were excessive for reasons such as poor project management or labor productivity. In addition, some cost-plus contracts contain penalty provisions which require us to pay amounts to the customer for failure to achieve certain milestones or performance standards. To the extent we are not able to recover the full amount of our costs under a cost-plus contract, including as a result of payments by us under contract penalty provisions, there would be a reduction, or possibly an elimination, of previously recognized and reported earnings. In certain circumstances it is possible that such adjustments could be material to our operating results.

We may incur significant costs in providing services in excess of original project scope without having an approved change order.

After commencement of a contract, we may perform, without the benefit of an approved change order from the customer, additional services requested by the customer for services that were not contemplated in our contract bid due to a change of mind by the customer or to incomplete or inaccurate engineering, project specifications and other similar information provided to us by the customer. Our construction contracts generally require the customer to compensate us for additional work or expenses incurred under these circumstances.

[Table of Contents](#)

A failure to obtain adequate compensation for these matters could require us to record in the current period an adjustment to revenue and profit recognized in prior periods under the percentage-of-completion accounting method. Any such adjustments, if substantial, could have a material adverse effect on our results of operations and financial condition, particularly for the period in which such adjustments are made. While we believe that our success in obtaining mutually satisfactory approved change orders from our customers has been comparable to the experience of our competitors, we cannot assure you that we will be successful in obtaining, through negotiation, arbitration, litigation or otherwise, approved change orders from customers to pay us amounts adequate to compensate us for our additional work or expenses.

Actual results could differ from the estimates and assumptions that we use to prepare our financial statements.

To prepare financial statements in conformity with generally accepted accounting principles, management is required to make estimates and assumptions, as of the date of the financial statements, which affect the reported values of assets, liabilities, revenues and expenses and disclosures of contingent assets and liabilities. Areas requiring significant estimation by our management include:

- contract expenses and profits and application of percentage-of-completion accounting;
- costs and estimated earnings in excess of billings on uncompleted contracts;
- provisions for uncollectible receivables and other collection disputes with customers for invoiced amounts;
- the amount and collectibility of claims against customers, third-party suppliers, subcontractors and others for increased costs incurred by us that were caused by the actions or inactions of these parties, such as increased costs due to delays in their performance or to the failure of machinery, equipment and supplies to perform to agreed specifications;
- provisions for income taxes and related valuation allowances;
- recoverability of goodwill;
- valuation of assets acquired and liabilities assumed in connection with business combinations; and
- accruals for estimated liabilities, including litigation and insurance reserves.

Our actual results could differ from these estimates.

If we are unable to attract and retain qualified personnel, and in particular, project managers, our ability to manage the performance of our contracts and our business will be harmed, which would impair our future revenues and profitability.

Our ability to attract and retain qualified engineers, skilled craftsmen and other experienced professional personnel in accordance with our needs will be an important factor in determining our future profitability. The market for these professionals is competitive and the supply extremely limited, and we cannot assure you that we will be successful in our efforts to retain these personnel or to attract them when needed. Therefore, when we anticipate or experience growing demand for our services and those of our competitors, we may incur the cost of maintaining a professional staff in excess of our current contract needs in an effort to have available sufficient qualified personnel to address this anticipated demand.

Competent and experienced project managers are especially critical to the profitable performance of our contracts, and in particular, on our fixed-price contracts where superior execution of the contract can result in profits greater than originally estimated or where inferior contract execution can reduce or eliminate estimated profits or even produce a loss. Our project managers are involved in all aspects of contracting and contract performance including, among other things:

- supervising the bidding process, including providing estimates of significant cost components such as material and equipment needs and the size and composition of the workforce;

Table of Contents

- negotiating contracts;
- supervising contract performance, including performance by our employees, subcontractors and other third party suppliers and vendors;
- determining the percentage of contract completion that is used by us to estimate amounts that can be reported as revenues and earnings on the contract under the percentage-of-completion method of accounting;
- negotiating requests for change orders and the final terms of an approved change order; and
- determining and documenting claims by us for increased costs incurred due to the failure of customers, subcontractors and other third-party suppliers of equipment and materials to perform on a timely basis and in accordance with contract terms.

If we must write off a significant amount of intangible assets, our earnings will be negatively impacted.

Because we have grown in part through acquisitions, goodwill and other acquired intangible assets represent a substantial portion of our assets. Goodwill was approximately \$49.7 million, or 22% of our total assets, as of May 31, 2004. If we make additional acquisitions, it is likely that we will record additional intangible assets. A determination that a significant impairment has occurred in the value of our unamortized intangible assets could require us to write off a substantial portion of our assets. Such a write-off could materially adversely affect our financial condition and results of operations.

We are and will continue to be involved in litigation, which will increase our costs and if adversely determined, could have a material adverse effect on our financial condition or results of operations.

We have been and may from time to time be named as a defendant in legal actions claiming damages in connection with the operation of our business and other matters. These are typically actions that arise in the normal course of our performing services on construction sites, including employment-related claims, claims for personal injury and claims for property damage. We may also be a plaintiff or a defendant in contractual disputes with customers, suppliers and subcontractors that normally involve payment and collection disputes and claims relating to the timeliness of performance and the quality and performance of equipment, materials, design or other services provided by us or our subcontractors and third-party suppliers. We maintain insurance against operating hazards in amounts that we believe are customary in our industry. However, our insurance has deductibles and exclusions of coverage so we cannot provide assurance that we are adequately insured against all the types of risks that are associated with the conduct of our business. If litigation were to arise, regardless of its outcome, it could result in substantial expense to us, significantly divert the efforts of our management and disrupt or otherwise severely impact our relationships with current or potential customers. A successful claim brought against us in excess of, or outside of, our insurance coverage could have a material adverse effect on our financial condition and results of operations. In addition to legal costs in connection with litigation involving payment and collection disputes with customers, we will incur interest costs resulting from drawing higher levels of debt under our revolving line of credit due to the failure to receive payment for disputed claims and accounts.

Our projects expose us to potential professional liability, product liability, warranty and other claims, which could be expensive, damage our reputation and harm our business. We may not be able to obtain or maintain adequate insurance to cover these claims.

We construct, perform services at and, to a lesser extent, engineer large industrial facilities in which accidents or system failures can be disastrous. Any catastrophic occurrence in excess of our insurance limits at locations

[Table of Contents](#)

engineered or constructed by us or where our products are installed or services performed could result in significant professional liability, product liability, warranty and other claims against us by our customers, including claims for cost over-runs and the failure of the project to meet contractually specified milestones or performance standards. Further, the rendering of our services on these projects could expose us to risks to, and claims by, third parties and governmental agencies for personal injuries, property damage and environmental matters, among others. Any claim, regardless of its merit or eventual outcome, could result in substantial costs to us, a substantial diversion of management's attention and adverse publicity, particularly for claims relating to environmental matters where the amount of the claim could be extremely large. Insurance coverage is increasingly expensive. We may not be able to obtain or maintain adequate protection against the types of claims described above. If we are unable to obtain insurance at acceptable cost or otherwise protect against the claims described above, we will be exposed to significant liabilities, which may materially and adversely affect our business and financial position.

We are susceptible to adverse weather conditions in our regions of operation, which may harm our business and financial results.

Our business may be adversely affected by severe weather, particularly in the Northeastern, East Coast and Mid-west regions of the United States where we have significant operations. Repercussions of severe weather conditions may include:

- curtailment of services;
- suspension of operations;
- weather related damage to our facilities;
- inability to deliver machinery, equipment and materials to jobsites in accordance with contract schedules; and
- loss of productivity.

Adverse events could negatively affect our liquidity position.

We cannot assure you that we will have sufficient liquidity or the credit capacity to meet all of our cash needs if we encounter significant working capital requirements, including the requirement to carry our costs included in uncollected accounts receivable, collection disputes, claims for increased costs caused by others, unapproved change orders and costs incurred in excess of contract billings.

Primarily as a result of these factors, we were not in compliance with certain of the financial covenants contained in our credit agreement as of May 31, 2004. In August 2004, we entered into an amendment to our credit agreement that waived such defaults. Pursuant to the amendment, we also converted \$20 million of outstanding borrowings under our \$55 million revolving credit facility to a Term Loan B, which matures on August 31, 2005 and currently bears interest at a rate equal to the Eurodollar Base Rate plus 3.25% until November 30, 2004, when the interest rate increases to an 18% fixed rate. The interest rate further increases by 3% on the last day of each fiscal quarter during which such \$20 million term loan remains outstanding, beginning with the quarter ended February 28, 2005. Our revolving credit facility was decreased to \$35 million. Upon full and complete payment of Term Loan B, availability under the revolver will increase to its original amount, subject to a permanent reduction equal to one-half of any alternative capital obtained by Matrix to refinance Term Loan B. We expect to refinance the Term Loan B prior to November 30, 2004, but cannot make any assurances that we will be able to do so.

In connection with the August 2004 amendments to our Credit Agreement, we also amended the terms of our financial covenants that, based upon market condition prevailing at the time, caused us to believe we would be in covenant compliance through the remainder of fiscal 2005. However, due primarily to lower than expected revenues in our construction services segment and higher than expected expenses relating to collection disputes and a one time charge for expenses associated with a cost reduction program, we experienced a default as of August 31, 2004 in one of our financial covenants. In October, 2004, we further amended our credit agreement to waive such default and to ease the restrictiveness of certain of our other financial covenants for the remainder of fiscal 2005. We believe, based upon

[Table of Contents](#)

current market conditions, that we will remain in compliance with these amended financial covenants throughout the remainder of fiscal 2005.

Insufficient liquidity could have important consequences to us. For example, we could:

- have reduced operating flexibility due to restrictions which could be imposed by our creditors, including restrictions on incurring additional debt, creating liens on our properties and paying dividends;
- have less success in obtaining new work if our sureties or our lenders were to limit our ability to provide new performance bonds or letters of credit for our projects;
- be required to divert a substantial portion of our cash flow away from operations to the repayment of debt and the interest associated with that debt, particularly in the event of significant increases in interest rates as a substantial amount of our debt is at floating rates;
- fail to comply with the terms of our credit facility, which could require us to incur significant fees to the lenders under such credit facility to obtain any waivers or amendments, or cause us to seek alternative financing which would cause management to divert its time and attention away from operations as it seeks to obtain alternative financing, or could cause us to delay bidding for or accepting new projects due to the lack of adequate working capital to fund initial mobilization costs, or otherwise adversely affect our operations that are dependent upon the availability of working capital;
- lose the services of skilled craftsmen and other experienced professionals if we are unable to retain them on our payroll during periods of idle time;
- be restricted in our ability to bid for new work that would require significant up-front expenditures for mobilization, equipment and raw materials; and
- experience difficulty in financing future acquisitions and/or continuing operations.

All or any of these consequences could place us at a disadvantage as compared with competitors with greater liquidity. This could have a negative impact upon our financial condition and results of operations.

Work stoppages and other labor problems could adversely affect us.

Some of our employees in the United States are represented by labor unions. A lengthy strike or other work stoppage on any of our projects could have a material adverse effect on our business and results of operations due to an inability to complete contracted projects in a timely manner. From time to time we have also experienced attempts to unionize certain of our non-union employees. While these efforts have achieved only limited success to date, we cannot provide any assurance that we will not experience additional and more successful union activity in the future.

We may incur unexpected liabilities associated with our acquisition of the Hake Group, Inc.

In March 2003, we acquired all of the capital stock of Hake Group, Inc. and its subsidiaries. Pursuant to the acquisition agreement, the former shareholders of Hake Group, Inc. indemnified us against certain liabilities related to the ownership and operation of the business prior to our acquisition. A portion of the acquisition purchase price consisted of promissory notes in the aggregate principal amount of \$10 million which serve as collateral for the indemnification obligations of the former Hake Group shareholders. These notes are payable in increasing annual installments over five years which, in turn, gradually reduces the amount of collateral remaining to secure any indemnification claims. We cannot assure you that the remaining outstanding principal amount of these notes will be adequate to cover any valid indemnification claims or any exposure related to the indemnified liabilities.

[Table of Contents](#)

There are integration and consolidation risks associated with our growth strategy. Future acquisitions may also result in significant transaction expenses and risks associated with entering new markets and we may be unable to profitably operate our business.

An aspect of our growth strategy has been, and continues to be, to grow through acquisitions. Our objective is to pursue strategic acquisitions in markets where we currently operate as well as in markets in which we have not previously operated. We may have difficulties identifying attractive acquisition candidates or we may be unable to acquire desired businesses on economically acceptable terms. Additionally, existing or future competitors may desire to compete with us for acquisition candidates that may have the effect of increasing acquisition costs or reducing the number of suitable acquisition candidates. We may not have the financial resources necessary to consummate any acquisitions or the ability to obtain the necessary funds on satisfactory terms. Any future acquisitions may result in significant transaction expenses and risks associated with entering new markets in addition to the integration and consolidation risks described above. We may not have sufficient management, financial and other resources to integrate future acquisitions. In the event we are unable to complete future strategic acquisitions, we may not grow in accordance with our expectations.

If we make any future acquisitions, we likely will have exposure to third parties for liabilities of the acquired business that may or may not be adequately covered by insurance or by indemnification, if any, from the former owners of the acquired business. Any of these unexpected liabilities could have a material adverse effect on us.

The loss of one or a few of our significant customers could adversely affect us.

From time to time due to the size of one or more of our contracts, one or a few customers have in the past and may in the future contribute a material portion of our consolidated revenues in any one year. Because these significant customers generally contract with us for specific projects, we may lose these customers from year to year as their projects with us are completed. If we do not replace them with other customers or other projects, our financial condition and results of operations could be materially adversely affected. Additionally, we have long-standing relationships with many significant customers. However, our contracts with these customers are on a project-by-project basis, and these customers may unilaterally reduce or discontinue their use of our services at any time. The loss of business from any one of these customers could have a material adverse effect on our business or results of operations.

Environmental factors and changes in laws and regulations could increase our costs and liabilities.

Our operations are subject to environmental laws and regulations, including those concerning:

- emissions into the air;
- discharges into waterways;
- generation, storage, handling, treatment and disposal of hazardous materials and wastes; and
- health and safety.

Our projects often involve highly regulated materials, including hazardous wastes. Environmental laws and regulations generally impose limitations and standards for regulated materials and require us to obtain permits and comply with various other requirements. The improper characterization, handling, or disposal of regulated materials or any other failure by us to comply with federal, state and local environmental laws and regulations or associated environmental permits could subject us to the assessment of administrative, civil, and criminal penalties, the imposition of investigatory or remedial obligations, or the issuance of injunctions that could restrict or prevent our ability to operate our business and complete contracted projects.

In addition, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERCLA, and comparable state laws, we may be required to investigate and remediate regulated materials. CERCLA and these comparable state laws typically impose liability without regard to whether a company knew of or caused the release, and liability for the entire cost of a clean-up can be imposed upon any responsible party.

The environmental, workplace, employment and health and safety laws and regulations, among others, to which we are subject are complex, change frequently and could become more stringent in the future. It is impossible to predict

[Table of Contents](#)

the effect of any future changes to these laws and regulations on us. We cannot assure you that our operations will continue to comply with future laws and regulations or that these laws and regulations and/or a failure to comply with these laws will not significantly adversely affect our business, financial condition and results of operations.

Changes in environmental laws and regulations or a reduced level of enforcement of existing laws and regulations could adversely affect the demand for our services and our results of operations.

Changes in environmental laws and regulations that reduce existing standards and a reduced level of enforcement of these laws and regulations could adversely affect the demand by our customers for many of our services. Proposed changes in regulations and the perception that enforcement of current environmental laws has been reduced has decreased the demand for some services, as customers have anticipated and adjusted to the potential changes. Future changes could result in a decreased demand for some of our services. The ultimate impact of any such future changes will depend upon a number of factors, including the overall strength of the economy and customer's views on whether new or more restrictive regulations will be adopted or whether there will be a relaxing of the requirements and levels of enforcement of existing regulations and the cost-effectiveness of remedies available under changed regulations. If proposed or enacted changes materially reduce demand for our environmental services, our results of operations could be adversely affected.

We face substantial competition in each of our business segments, which may have a material adverse effect on our business by reducing our ability to increase or maintain profitability.

We face competition in all aspects of our business from numerous regional, national and international competitors, many of which have greater financial and other resources than we do. Our competitors include well-established, well-financed concerns, both privately and publicly held, including many major power equipment manufacturers, engineering and construction companies and internal engineering departments at utilities and certain of our customers. The markets that we serve require substantial resources and particularly highly skilled and experienced technical personnel. We believe we compete primarily on the basis of price, customer satisfaction, our safety record and programs, the quality of our products and services and our ability to timely comply with project schedules. We may encounter increased competition from existing competitors or new market entrants in the future, which could have a material adverse effect on our business, financial condition or results of operations.

Our common stock, which is listed on the Nasdaq National Market, has experienced significant price and volume fluctuations. From June 1, 2003, through October 8, 2004, our stock price has ranged from \$3.98 to \$20.49. These fluctuations are likely to continue in the future, and you may not be able to resell your shares of common stock or other securities whose price is related to that of our common stock at or above the purchase price paid by you.

The market price of our common stock may change significantly in response to various factors and events beyond our control, including the following:

- the risk factors described in this prospectus;
- a shortfall in operating revenue or net income from that expected by securities analysts and investors;
- changes in securities analysts' estimates of our financial performance or the financial performance of our competitors or companies in our industry generally;
- general conditions in our customers' industries; and
- general conditions in the security markets.

Some companies that have volatile market prices for their securities have been subject to security class action suits filed against them. If a suit were to be filed against us, regardless of the outcome, it could result in substantial costs and a diversion of our management's attention and resources. This could have a material adverse effect on our business, results of operations and financial condition.

Risks Related to this Offering

Provisions in our certificate of incorporation, by-laws, shareholder rights plan and the General Corporation Law of the State of Delaware, or DGCL, could reduce the market price of our common stock by discouraging a takeover that stockholders may consider favorable.

Our certificate of incorporation and by-laws contain certain provisions that could prevent, delay or make more difficult the ability of a third party to acquire us. These include:

- a provision limiting the right to call special meetings of stockholders to the Chairman of our board or to a majority of the directors on our board;
- a provision prohibiting shareholder action by written consent; and
- provisions authorizing our board of directors to issue up to 4,800,000 shares of preferred stock having such rights, privileges and preferences as may be approved by our board, all without the consent or approval of our shareholders.

We have also adopted a shareholder rights plan that makes it difficult for any person to acquire more than 15% of our common stock without the prior consent of our board. As a result, it is highly unlikely that any person would make an unsolicited offer to acquire our company. In addition, as a Delaware corporation, we are also subject to certain Delaware anti-takeover provisions. Under Delaware law, a corporation may not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on Delaware law to prevent or delay an acquisition of us.

Any one or more of these factors could have the effect of delaying or preventing a change in control or the removal of management, and deterring potential acquirers from making an offer to our shareholders.

Future sales of our common stock may depress our stock price.

Sales of a substantial number of shares of our common stock in the public market or otherwise, either by us, a member of management or a major shareholder or the perception that these sales could occur, could depress the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

We may issue additional equity securities, which would lead to dilution of our issued and outstanding stock.

The issuance of additional common stock or securities convertible into common stock would result in dilution of the ownership interest in us held by existing shareholders. We are authorized to issue, without shareholder approval, 4,800,000 shares of preferred stock, no par value, in one or more series, which may give other shareholders dividend, conversion, voting, and liquidation rights, among other rights, which may be superior to the rights of holders of our common stock. Our board of directors has no present intention of issuing any such preferred stock series, but reserves the right to do so in the future. In addition, we are authorized to issue, without shareholder approval, a significant number of additional shares of our common stock and securities convertible into either common stock or preferred stock.

We are a holding company and, except for cash on hand, are dependent on earnings of and cash flow from our subsidiaries, which could be subject to statutory restrictions impeding their ability to transfer to us those funds necessary for us to pay principal and interest on any debt securities.

We are a holding company, and our assets primarily consist of the stock of our subsidiaries. Any debt securities offered by this prospectus will be direct unsecured obligations of Matrix Service Company, which derives all of its revenues from the operations of its subsidiaries. As a result, except to the extent of cash on hand, we are dependent on the earnings and cash flow of, and dividends and distributions or advances from, our subsidiaries to provide the

[Table of Contents](#)

funds necessary to meet our debt service obligations, including the principal of and interest on the debt securities. The payment of dividends to us from our subsidiaries and the payment of interest on or the repayment of any principal of any loans or advances we make to any of our subsidiaries may be subject to statutory restrictions and are contingent upon the earnings of our subsidiaries.

Any debt securities issued by us will be effectively subordinated to the liabilities of our subsidiaries to their creditors.

Any debt securities offered by this prospectus will be general unsecured obligations of Matrix Service Company. Any senior debt issued by us will rank equal in right of payment to all of our unsubordinated debt and will rank senior in right of payment to our subordinated debt, if any. At present we do not have any subordinated debt outstanding under this Registration Statement or otherwise. However, as a holding company, before we can receive any funds from a subsidiary to pay any debt issued by us, the obligations owed to creditors of that subsidiary must first be satisfied. As a result, our debt securities will be effectively subordinated to any debt of our subsidiaries, including trade payables.

RATIO OF EARNINGS TO FIXED CHARGES

The following table contains our consolidated ratios of earnings to fixed charges.

	Three Months Ended August 31,	Year Ended May 31,				
	2004	2004	2003	2002	2001	2000
Ratio of earnings to fixed charges	*	5.78	9.31	9.89	10.02	10.38

For purposes of computing the ratio of earnings to fixed charges:

(1) "earnings" consist of income before provision for income taxes, distributions from unconsolidated subsidiaries, amortization of capitalized interest, and fixed charges (excluding capitalized interest) less equity in earnings of unconsolidated subsidiaries and interest capitalized; and

(2) "fixed charges" consist of interest expense, capitalized interest, amortization of debt discount and expense relating to indebtedness and estimated interest within rental expense.

There were no dividends paid or accrued during the periods presented above.

* Earnings were inadequate to cover fixed charges by \$1.5 million for the three months ended August 31, 2004.

USE OF PROCEEDS

Currently we intend to use the net proceeds from the sale of the securities to refund or retire debt, finance capital expenditures and future acquisitions and for other working capital and general corporate purposes. If we elect at the time of the issuance of the securities to make a different or more specific use of proceeds other than as described in this prospectus, we will describe the change in use of proceeds in the applicable prospectus supplement. Until we use the net proceeds from the sale of any securities for the above purposes, we may invest the funds in short-term, investment grade, interest-bearing securities. Our management may spend the proceeds from the sale of the securities in ways which the stockholders may not deem desirable.

LEGAL OWNERSHIP OF SECURITIES

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means that securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depository on behalf of other financial institutions that participate in the depository's book-entry system. Only the person in whose name a security is registered is recognized as the holder of that security. Consequently, for securities issued in global form, we will recognize only the depository as the holder of the securities, and we will make all payments on the securities to the depository. The depository passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depository's book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not holders, of the securities. If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system and instead will be issued as fully registered securities in the name of the registered holder thereof.

DESCRIPTION OF COMMON STOCK WE MAY OFFER

The following summary description of our common stock is based on the provisions of our certificate of incorporation, bylaws and shareholders' rights agreement and on applicable provisions of the Delaware General Corporation Law ("DGCL") as in effect on the date of this prospectus. This information is not a complete recitation of every provision applicable to our common stock that is contained in our certificate of incorporation, bylaws and shareholders' rights agreement or the DGCL. Our intent is to disclose in summary form the provisions contained in those documents and law relating to our common stock that we believe would be of material interest to a person considering an investment in our common stock. We encourage prospective investors to read these documents and the DGCL prior to making an investment in our common stock. For information on how to obtain copies of our certificate of incorporation, bylaws and shareholders' rights agreement, see "Where You Can Find More Information".

We may offer common stock, common stock issuable upon the conversion of preferred stock, common stock issuable upon the conversion or exchange of debt securities or upon the exercise of warrants to purchase common stock.

Authorized Capital

Currently we have authority to issue 30,000,000 shares of common stock, \$0.01 par value per share. As of October 6, 2004, 17,316,326 shares of our common stock were issued and outstanding. The outstanding shares of common stock are fully paid and nonassessable. Holders of common stock have no preemptive rights and have no rights to convert their common stock into any other securities; however, the registered owner of each outstanding share of common stock currently has the right, subject to certain limitations and to the occurrence of certain events, to purchase for \$40.00 one one-hundredth of a share of our Series B Junior Participating Preferred Stock. This right has been granted to registered owners of our common stock pursuant to our shareholders' rights agreement dated November 2, 1999. The terms and provisions of our Series B Junior Participating Preferred Stock and the rights and limitations of the registered owners of our common stock to acquire and exercise the rights granted pursuant to our shareholders' rights agreement are summarized below under the caption "Description of Common Stock We May Offer-Anti-Takeover Provisions-Shareholders' Rights Agreement."

Voting Rights

Subject to the limitations imposed upon certain holders of our common stock pursuant to the terms of our shareholders' rights agreement, the holders of shares of common stock are entitled to one vote per share on all

[Table of Contents](#)

matters to be voted on by stockholders. Holders of common stock do not have cumulative voting rights with respect to the election of directors or as to any other matter to be voted upon by the holders of common stock. The holders of a majority of the issued and outstanding shares of our common stock is required to amend our certificate of incorporation *except that* the holders of at least 66 ²/₃% of the issued and outstanding shares of our common stock is required to amend the provisions in our certificate of incorporation that:

- authorize our board of directors to adopt a plan similar to that contained in our shareholders' rights agreement;
- prohibit shareholders from taking action by written consent;
- authorizes only the Chairman of our Board of Directors to call a special meeting of shareholders only upon the request of a majority of the members of our board of directors;
- limits the business to be conducted at any special meeting of shareholders to that business presented by the Chairman of the board of directors only upon the request of a majority of the members of our board of directors;
- subject to the rights of holders of a series of preferred stock to elect additional directors under certain circumstances, limits the number of members of the board of directors to not less than three nor more than 15 as may from time to time be provided in our bylaws; and
- requires the vote of holders of at least 66 ²/₃% of the issued and outstanding shares of our common stock to do or approve any of the foregoing.

Our bylaws may be amended by our board of directors without the vote or consent of the holders of our common stock.

Dividend and Liquidation Rights

Subject to preferences that may be applicable to any outstanding preferred stock, holders of common stock are entitled to receive ratably such dividends as may be declared by our board of directors in its discretion from funds legally available. Therefore, in the event of a liquidation, dissolution, or winding up of our company, holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any outstanding preferred stock.

Diminution of Rights of Common Stock

The voting, dividend and liquidation rights of the holders of our common stock may be materially adversely diminished by the terms of any series of preferred stock that we may issue in the future. Our certificate of incorporation currently authorizes our board of directors to issue up to 4,800,000 shares of one or more series of preferred stock having such rights, privileges and preferences as may be determined by our board of directors in its discretion without the vote, consent or approval of our common stock.

Transfer Agent and Registrar

The transfer agent and registrar of our common stock is UMB Bank, NA.

Anti-Takeover Provisions

Provisions of DGCL and of our certificate of incorporation, bylaws and shareholders' rights agreement may delay, defer or prevent a change of control of our company.

[Table of Contents](#)

Delaware General Corporation Law

Under Delaware General Corporation Law, most business combinations, including mergers, consolidations and sales of substantially all of the assets of a corporation, must be approved by the vote of the holders of at least a majority of the outstanding shares of common stock and any other affected class of stock of a Delaware corporation. The certificate of incorporation or bylaws of a Delaware corporation may, but are not required to, set a higher standard for approval of such transactions. Our certificate of incorporation and bylaws follow the statutory rule, requiring majority approval of a business combination. The DGCL also provides certain restrictions on business combinations involving interested parties. Under the DGCL, a corporation may not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on this provision of the DGCL to prevent or delay an acquisition of us.

Certificate of Incorporation and Bylaws

Our board of directors has the authority granted to it in our certificate of incorporation to issue up to 4,800,000 shares of preferred stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights of those shares, without any further vote or action by our stockholders. The issuance of preferred stock may delay, defer or prevent a change in control. The terms of the preferred stock that might be issued could potentially make more difficult or expensive our consummation of any merger, reorganization, sale of substantially all of our assets, liquidation or other extraordinary corporate transaction. In addition, the issuance of preferred stock could have a dilutive effect on our stockholders.

Our stockholders must give written notice delivered to us no less than 80 days prior to the date of any annual meeting to nominate a candidate for director or to present a proposal to our stockholders to be considered at the meeting; provided that, if we give less than 90 days prior written notice of an annual meeting of stockholders then stockholders must give written notice delivered to us no less than 10 days following the date of such written notice by us to nominate a candidate for director or to present a proposal to be considered by our stockholders at the meeting.

Stockholders do not have the right to call special meetings of stockholders. Only the Chairman of our board of directors upon the request of a majority of the board of directors may call a special meeting of stockholders. The only business that may be conducted at a special meeting of stockholders is the business presented at the meeting by the Chairman of our board of directors upon the request of a majority of the members of our board of directors. Actions may not be taken by stockholders by written consent in lieu of a meeting of stockholders.

Shareholders' Rights Agreement

Our certificate of incorporation presently authorizes 200,000 shares of Series B Junior Participating Preferred Stock. Pursuant to the terms of our shareholders' rights agreement, each outstanding share of common stock has the right to purchase for \$40 one one-hundredths of a share of such junior preferred stock in the event a person or group of persons acquires beneficial ownership of 15% or more of our common stock or announces a tender offer that would result in a person or group acquiring beneficial ownership of 15% or more of our common stock. When issued upon the exercise of such right, each one one-hundredths of a share of such junior preferred stock entitles the holder thereof, other than a holder that is the person or group person that acquired or made a tender offer to acquire beneficial ownership of 15% or more of our common stock, to purchase additional shares of our common stock or of securities of a company controlled by such person or group that proposes a business combination with us, at a substantial discount from then current market prices. At any time prior to the rights to purchase the junior preferred stock becoming exercisable, we may redeem such rights for \$0.01 per right and we may amend the terms relating to such rights without the consent or approval of the holders of our common stock.

The above provisions contained in our certificate of incorporation, bylaws and shareholders' rights agreement are intended to enhance the likelihood of continuity and stability in the composition of our board and in the policies formulated by them and to discourage certain types of transactions that may involve an actual or threatened change in control of our company in a manner deemed by our board of directors to not be in the best interests of our stockholders. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy contests. However, these provisions could have the effect of

[Table of Contents](#)

discouraging others from making tender offers for our shares and also may have the effect of preventing changes in our company or management.

DESCRIPTION OF PREFERRED STOCK WE MAY OFFER

This section describes the general terms and provisions of any series of preferred stock we may offer in the future pursuant to a prospectus supplement to this prospectus. We will describe the specific terms of any series of preferred stock in a prospectus supplement. Those terms may differ from the terms discussed below. Any series of preferred stock we issue will be governed by our certificate of incorporation and by the certificate of designation relating to that series. We will file the certificate of designation with the SEC and incorporate it by reference as an exhibit to our registration statement at or before the time we issue any preferred stock of that series.

General

Each series of preferred stock will have specific financial and other terms that we will describe in a prospectus supplement. Any or all of the rights of our preferred stock may have preference over, and be greater than, the rights of our common stock.

Authorized Preferred Stock

Our certificate of incorporation authorizes us to issue 5,000,000 shares of undesignated preferred stock, \$0.01 par value per share, of which 200,000 shares have been reserved and designated as our Series B Junior Participating Preferred Stock having the rights, if issued, described above. At the date of this prospectus, no other shares of preferred stock have been authorized and no shares of preferred stock are outstanding.

We may issue preferred stock from time to time in one or more series, without stockholder approval, when authorized by our board of directors. Upon issuance of a particular series of preferred stock, our board of directors is authorized to specify:

- the number of shares to be included in the series;
- the annual dividend rate, if any, for the series, whether such dividends shall be cumulative or noncumulative, the dates at which dividends shall be payable and any restrictions or conditions on the payment of dividends;
- the redemption rights and price, if any, for the series and the terms and conditions of redemption;
- the terms and amount of any sinking fund provisions for the purchase or redemption of the series;
- if the series is convertible, the terms and conditions of conversion;
- the amounts payable to holders upon our liquidation, dissolution or winding up;
- the voting rights, if any, of the holders of such series; and
- any other rights, preferences, powers and limitations relating to the series.

Our board of director's ability to authorize, without stockholder approval, the issuance of preferred stock with conversion, liquidation voting and other rights, may affect adversely the rights of holders of our common stock or other series of preferred stock that may be outstanding. In certain circumstances, an issuance of preferred stock could have the effect of decreasing the market price of our common stock. Management believes that the availability of preferred stock provides us with increased flexibility in structuring possible future financing and acquisitions and in meeting other needs that might arise.

Specific Terms of a Series of Preferred Stock

The preferred stock we may offer may be issued in one or more series. Shares of preferred stock, when issued against full payment of the purchase price, will be fully paid and non-assessable. Their par value or liquidation preference, however, will not be indicative of the price at which they will actually trade after their issuance. If necessary, the prospectus supplement will provide a description of U.S. Federal income tax consequences relating to the purchase and ownership of the series of preferred stock offered by that prospectus supplement.

The preferred stock will have the dividend, liquidation, redemption and voting rights discussed below, unless otherwise described in a prospectus supplement relating to a particular series. A prospectus supplement will discuss the following features of the series of preferred stock to which it relates:

- the designations and stated value per share;
- the number of shares offered;
- the amount of liquidation preference per share;
- the initial public offering price at which the preferred stock will be issued;
- the dividend rate, the method of its calculation, the dates on which dividends would be paid, whether or not the dividends on the shares are cumulative and, if so, the date or dates from which dividends would cumulate;
- any redemption or sinking fund provisions;
- the voting rights, if any;
- the listing of the preferred stock on any securities exchange;
- the applicable registrar and transfer agent for the series of preferred stock;
- any conversion or exchange rights; and
- any additional voting, dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, powers, limitations and restrictions.

Unless we state otherwise in the prospectus supplement, the preferred stock will have priority over our common stock with respect to dividends and distribution of assets upon liquidation, but will rank junior to all obligations and liabilities that must be satisfied by us prior to any liquidating distribution to the holders of preferred stock. Any series of preferred stock could rank senior, equal or junior to our other capital stock, as may be specified in a prospectus supplement, as long as our certificate of incorporation so permits.

DESCRIPTION OF DEBT SECURITIES WE MAY OFFER

We may issue one or more series of senior debt securities under a senior note indenture and one or more series of subordinated debt securities under a subordinated note indenture. Each indenture is between us and a trustee to be determined. A form of each indenture is filed as an exhibit to the registration statement of which this prospectus is a part. The terms and provisions of each indenture are substantially similar, except that the subordinated note indenture contains a definition of the "senior debt" to which the subordinated debt is junior and subordinate in right of payment as well as the operative terms and provisions relating to the subordination. The following summary is not a complete recitation of every provision contained in each indenture. Our intent is to disclose in summary form the provisions in each indenture as in effect on the date of this prospectus that we believe would be of material interest to a person considering an investment in a series of senior or subordinated debt securities we may issue in the future. The specific terms of any series of senior or subordinated debt securities we may authorize for issuance will be contained in a resolution adopted by our board of directors and set forth in an amendment, called an indenture supplement, to the applicable indenture. Copies of the resolution and/or the indenture supplement will

[Table of Contents](#)

be filed with the SEC and incorporated by reference in this registration statement and will be available for copying and inspection as described elsewhere in this prospectus. We will also describe the specific terms of any debt securities we have authorized for issuance in a prospectus supplement which will also describe any applicable modifications or additions to the general terms of the debt securities and the applicable indenture described in this prospectus. Accordingly, for a description of the terms of any series of senior or subordinated debt securities we may offer pursuant to this registration statement of which this prospectus is a part, reference must be made to both the description of the senior and subordinated debt securities in this prospectus and in the applicable prospectus supplement. We also encourage prospective investors to read either the resolution of our board of directors and/or the indenture supplement we will file with the SEC pertaining to the series of senior or subordinated debt we may offer. Any Indenture will be subject to, and governed by, the Trust Indenture Act of 1939. Capitalized terms used in this section without definition have the meanings given those terms in the indenture.

General

The debt securities offered by this prospectus will be our unsecured obligations and will be either senior or subordinated. Senior debt will be issued under a senior note indenture and subordinated debt will be issued under a subordinated note indenture, both of which have been filed as exhibits to the registration statement. In this prospectus, we sometimes refer to the senior note indenture and the subordinated note indenture individually as an “indenture” and collectively as the “indentures.” The indentures provide that our debt securities may be issued in one or more series, with different terms, in each case as authorized from time to time by our board of directors. The indentures also give us the ability to reopen a previous issue of a series of debt securities in order to issue additional debt securities of that same series or to establish additional or amended terms for such series of debt securities. None of the indentures prohibits or in any way limits our right to incur debt in addition to that issued under the indentures.

Neither the senior debt securities nor the subordinated debt securities will be secured by any of our property or assets. Thus, by owning a debt security, you are one of our unsecured creditors.

If we determine to issue a series of debt securities pursuant to this registration statement of which this prospectus is a part, we will prepare and distribute a prospectus supplement describing the terms and provisions of such series. A prospectus supplement will specify the following terms of any issue of debt securities we may offer:

- the designation or title, the aggregate principal amount and the authorized denominations if other than \$1,000 and integral multiples of \$1,000;
- whether the series of debt securities will be senior or subordinated debt;
- if subordinated, a description of the “senior debt” to which such series is subordinated and the terms and conditions of such subordination;
- the price(s) at which debt securities will be issued and, if applicable, the method of determining the price;
- whether such debt securities will be issued pursuant to a medium term notes program;
- the date or dates on which the debt securities will mature and any right to extend such date or dates;
- the currency, currencies or currency units in which payments on the debt securities will be payable and the manner of determining the U.S. dollar equivalent for purposes of determining outstanding debt securities of a series;
- the rate or rates at which the debt securities will bear interest, if any, or the method of determination (including indices) of such rate or rates;
- the interest payments dates and the record date for interest payments;

[Table of Contents](#)

- any mandatory or optional sinking fund or analogous provisions for the purchase or redemption of such debt securities;
- the amounts, if any, and the dates on or after which, we may or must repay, repurchase or redeem all or a part of the debt securities;
- the date or dates, if any, after which the debt securities may be converted or exchanged into or for shares of our common stock or other securities of our company, the securities or property of another person, or settled for the cash value of securities issued by us or a third party and the terms for any such conversion or exchange or settlement;
- the exchanges, if any, on which the debt securities may be listed;
- any special provisions for the payment of additional amounts with respect to the debt securities;
- whether the debt securities are to be issuable as registered securities or bearer securities or both, whether any of the debt securities are to be issuable initially in temporary global form and whether any of the debt securities are to be issuable in permanent global form;
- each office or agency where the principal of, the premium (if any) and the interest on the debt securities will be payable and each office or agency where the debt securities may be presented for conversion registration of transfer or exchange;
- any right to defer payments of interest with respect to the debt securities;
- whether the debt securities will be subject to defeasance or covenant defeasance; and
- any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

The senior debt securities will be unsecured and will rank equally with all of our other unsecured and unsubordinated indebtedness. The subordinated debt securities will be unsecured and will rank subordinate to and junior in right of payment, to the extent set forth in the subordinated indenture, as amended by any supplemental indenture, to all of our senior debt.

Some of the debt securities may be issued as discounted debt securities to be sold at a substantial discount below their stated principal amount. The prospectus supplement will contain any Federal income tax consequences and other special considerations applicable to discounted debt securities.

Payment and Transfer

Unless we state otherwise in a prospectus supplement, we will issue debt securities only as registered securities, which means that the name of the holder will be entered in a register which will be kept by the trustee or another agent of ours. Unless we state otherwise in a prospectus supplement, we will make principal and interest payments at the office of the paying agent or agents we name in the prospectus supplement or by mailing a check to you at the address we have for you in the register.

Unless we state otherwise in a prospectus supplement, you will be able to transfer registered debt securities at the office of the transfer agent or agents we name in the prospectus supplement. You may also exchange registered debt securities at the office of the transfer agent for an equal aggregate principal amount of registered debt securities of the same series having the same maturity date, interest rate and other terms as long as the debt securities are issued in authorized denominations.

Neither we nor the trustee will impose any service charge for any transfer or exchange of a debt security, however, we may ask you to pay any taxes or other governmental charges in connection with a transfer or exchange of debt securities.

[Table of Contents](#)

If the debt securities are redeemable and we redeem less than all of the debt securities of a particular series, we may block the transfer or exchange of debt securities during a specified period of time in order to freeze the list of holders entitled to receive notice of the redemption. The period begins 15 days before the day we mail the notice of redemption and ends on the day of that mailing. We also may refuse to register transfers or exchanges of debt securities selected for redemption. However, we will continue to permit transfers and exchanges of the unredeemed portion of any debt security being partially redeemed.

Global Notes, Delivery and Form

Unless otherwise specified in a prospectus supplement, the debt securities will be issued in the form of one or more fully registered Global Notes (as defined below) that will be deposited with, or on behalf of, The Depository Trust Company, New York, New York (the “Depository”) and registered in the name of the Depository’s nominee. Global Notes are not exchangeable for definitive note certificates except in the specific circumstances described below. For purposes of this prospectus, “Global Note” refers to the Global Note or Global Notes representing an entire issue of debt securities.

As set forth below, an exchange or transfer of a Global Note may be done, in whole and not in part, only to another nominee of the Depository or to a successor of the Depository or its nominee.

The Depository has advised us as follows:

- The Depository is:
 - a limited purpose trust company organized under the laws of the State of New York;
 - a “banking organization” within the meaning of the New York banking law;
 - a member of the Federal Reserve System;
 - a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
 - a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934.

The Depository was created to hold securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants through electronic book-entry changes in accounts of its participants, eliminating the need for physical movements of securities certificates. The Depository participants include securities brokers and dealers, banks, trust companies, clearing corporations and others, some of whom own the Depository. Access to the Depository book-entry system is also available to others that clear through or maintain a custodial relationship with a participant, either directly or indirectly. Where we issue a Global Note in connection with the sale thereof to an underwriter or underwriters, the Depository will immediately credit the accounts of participants designated by such underwriter or underwriters with the principal amount of the debt securities purchased by such underwriter or underwriters.

Ownership of beneficial interests in a Global Note and the transfers of ownership will be effected only through records maintained by the Depository (with respect to participants), by the participants (with respect to indirect participants and certain beneficial owners) and by the indirect participants (with respect to all other beneficial owners). The laws of some states require that certain purchasers of securities take physical delivery in definitive form of securities they purchase. These laws may limit your ability to transfer beneficial interests in a Global Note.

So long as a nominee of the Depository is the registered owner of a Global Note, such nominee for all purposes will be considered the sole owner or holder of such debt securities under the indenture. Except as provided below, you will not be entitled to have debt securities registered in your name, will not receive or be entitled to receive physical delivery of debt securities in definitive form, and will not be considered the owners or holders thereof under the indenture.

[Table of Contents](#)

We will make payment of principal of, and interest on, debt securities represented by a Global Note to the Depository or its nominee, as the case may be, as the registered owner and holder of the Global Note representing those debt securities. The Depository has advised us that upon receipt of any payment of principal of, or interest on, a Global Note, the Depository will immediately credit accounts of participants with payments in amounts proportionate to their respective beneficial interests in the principal amount of that Global Note, as shown in the records of the Depository. Standing instructions and customary practices will govern payments by participants to owners of beneficial interests in a Global Note held through those participants, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name." Those payments will be the sole responsibility of those participants, subject to any statutory or regulatory requirements that may be in effect from time to time.

Neither we, the trustee, any paying agent, any registrar nor any of its or our respective agents will be responsible for any aspect of the records of the Depository, any nominee or any participant relating to beneficial ownership interests in the Global Note or for any payments made on account of such beneficial interests in a Global Note or for maintaining, supervising or reviewing any of the records of the Depository, any nominee or any participant relating to any beneficial ownership interests in the Global Note.

We will issue debt securities in definitive form in exchange for a Global Note only in the following situation:

- if the Depository is at any time unwilling or unable to continue as depository and a successor depository is not appointed by us within 90 days, or
- if we choose to issue definitive debt securities.

In either instance, an owner of a beneficial interest in a Global Note will be entitled to have debt securities equal in principal amount to such beneficial interest registered in its name and will be entitled to physical delivery of debt securities in definitive form. Debt securities in definitive form will be issued in denominations of \$1,000 and integral multiples thereof and will be issued in registered form only, without coupons. We will maintain in the Borough of Manhattan, The City of New York, one or more offices or agencies where debt securities may be presented for payment and may be transferred or exchanged.

Modification of the Indentures

In general, our rights and obligations and the rights of the holders under the indentures may be modified if the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series affected by the modification consent to it. A covenant or other provision of an indenture that has expressly been included solely for the benefit of one or more particular series of debt securities, or that modifies the rights of holders of the debt securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under such indenture of the holders of debt securities of any other series. However, Section 9.02 of each indenture provides that, unless each affected holder agrees, we cannot

- make any adverse change to any payment terms of a debt security such as:
 - extending the maturity date or dates,
 - extending the date on which we have to pay interest or make a sinking fund payment, other than deferrals of the payments of interest during any extension period as described in any applicable prospectus supplement,
 - reducing the interest rate,
 - reducing the amount of principal or of any principal payment we have to repay,
 - changing the currency in which we have to make any payment of principal, premium or interest,
 - modifying any redemption or repurchase right to the detriment of the holder, or

Table of Contents

- impairing any right of a holder to bring suit for payment,
- reduce the percentage of the aggregate principal amount of debt securities needed to make any amendment to the indenture or to waive any covenant or default and its consequences;
- waive any past payment default; or
- make any change to Section 9.02.

However, if we and the trustee agree, we can amend the indenture without notifying any holders or seeking their consent if the amendment does not materially and adversely affect any holder.

In addition, the subordinated note indenture may not be amended without the consent of a majority of the holders of subordinated debt securities affected thereby to modify the subordination of the subordinated debt securities issued under that indenture in a manner adverse to the holders of the subordinated debt securities.

Consolidation, Merger and Sale

We shall not consolidate with or merge into any other corporation or Person or sell, convey, transfer, lease or dispose of all or substantially all of our properties and assets substantially as an entirety to any other corporation or Person, unless (1) such other corporation or Person expressly assumes by supplemental indenture executed and delivered to the trustee, the payment of the principal of and premium, if any, and interest on all the debt securities and the performance of every covenant of the indenture on our part to be performed or observed; (2) immediately after giving effect to such transactions, no Event of Default, and no event which after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and (3) we have delivered to the trustee an officers' certificate and opinion of counsel, each stating that all provisions of the indenture required to be complied with in connection with such transaction have been complied with.

Events of Default

Each indenture defines an Event of Default with respect to each series of debt securities issued pursuant to the indenture. Unless otherwise provided in an indenture supplement and in the applicable prospectus supplement, Events of Default are any of the following with respect to each series of debt securities:

- default in any payment of principal or premium, if any, on any debt security of such series when due;
- default for 30 days in payment of any interest, if any, on any debt security of such series (subject to the deferral of any due date in the case of an extension period);
- default in the making or satisfaction of any sinking fund payment or analogous obligation for 30 days on the debt securities of such series;
- default for 90 days after written notice, as provided in the indenture, to us in the performance of any other covenant in respect of the debt securities of such series contained in such indenture;
- certain events in bankruptcy, insolvency or reorganization; or
- any other event of default provided with respect to debt securities of a series.

We are required by the terms of each indenture to annually inform the trustee as to our compliance with all of the conditions and covenants applicable to us under the indenture. In addition, we are required to inform the trustee of the occurrence of any Event of Default within five business days of our becoming aware of any such Event of Default.

Each indenture provides that the trustee may withhold notice to the holders of any series of debt securities issued thereunder of any Event of Default if the trustee considers it in the interest of such holders to do so provided the trustee may not withhold notice of default in the payment of principal, premium, if any, or interest, if any, on any of

[Table of Contents](#)

the debt securities of such series or in the making of any sinking fund installment or analogous obligation with respect to such series.

Each indenture provides that if an Event of Default occurs and is continuing with respect to any series of debt securities, either the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of such series may declare the principal amount (or in the case of discounted debt securities, such portion of the principal amount as may be specified in the terms of that series) of all the debt securities of that series to be due and payable immediately and, upon such declaration, the full principal amount of the debt securities of such series shall be and become immediately due and payable. At any time after a declaration of acceleration with respect to debt securities of any series has been made, and before a judgment or decree for payment of money has been obtained by the trustee, the holders of a majority in aggregate outstanding principal amount of the debt securities of that series may annul and rescind such acceleration if we shall have paid or deposited with the Trustee an amount sufficient to pay all matured installments of interest on such series plus the principal of (and premium, if any, on) all debt securities of that series that are due and payable through the date of such payment or deposit by us, other than by reason of acceleration resulting from the declaration of an Event of Default.

Other than the duties of a trustee during a default, the trustee is not obligated to exercise any of its rights or powers under each indenture at the request, order or direction of any holders of debt securities of any series issued thereunder unless such holders shall have offered to the trustee reasonable indemnity. Subject to such indemnification provision, each indenture provides that the holders of a majority in principal amount of the debt securities of any series issued thereunder at the time outstanding shall have any remedy available to the trustee thereunder, or exercising any trust or power conferred on such trustee thereunder, or exercising any trust or power conferred on such trustee with respect to the debt securities of such series. However, the trustee may decline to act if it has not been offered reasonable indemnity or if it determines that the proceedings so directed would be illegal or involve it in any personal liability.

The indentures do not have a cross-default provision. This means that a default by us on any other debt does not result in an Event of Default under any indenture. It further means that an Event of Default under one series of debt securities issued under an indenture does not constitute an Event of Default under any other series of debt securities issued under the same or any other indenture.

Conversion and Exchange Rights

The debt securities of any series may be convertible into or exchangeable for other securities we issue or securities of another issuer or property or cash on the terms and subject to the conditions set forth in the applicable prospectus supplement.

Defeasance and Discharge

The following discussion of full defeasance and discharge will apply to any series of debt securities unless otherwise indicated in the applicable prospectus supplement with respect to the debt securities of a series.

Each indenture provides that if we choose to have the defeasance and discharge provision applied to the debt securities, we can legally release ourselves from any payment or other obligations on the debt securities, except for the ministerial obligations described below, if we put in place the following arrangements for you to be repaid:

- We must deposit in trust for the benefit of all direct holders of debt securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make any interest, premium, principal or other payments on the debt securities on their various due dates.
- We must deliver to the trustee a legal opinion of our counsel confirming that we received from, or there has been published by, the U.S. Internal Revenue Service a ruling, or there has been a change in the U.S. federal income tax law, and, in either case, under then current U.S. law we may make the above deposit without causing you to be taxed on the debt securities any differently than if we did not make the deposit and just repaid the debt securities ourselves.

[Table of Contents](#)

In addition, the subordinated note indenture provides that if we choose to have the defeasance and discharge provision applied to the subordinated debt securities, the subordination provisions of the subordinated note indenture will become ineffective.

However, even if we make the deposit in trust and opinion delivery arrangements discussed above, a number of our obligations relating to the debt securities will remain. These include our obligations:

- to register the transfer and exchange of debt securities;
- to replace mutilated, destroyed, lost or stolen debt securities;
- to maintain payment agencies; and
- to hold money for payment in trust.

Covenant Defeasance

The indentures also allow us to choose whether covenant defeasance will apply to any series of debt securities. If we do so choose, we will say so in the prospectus supplement.

The indentures provide that if we choose to have the covenant defeasance provision applied to any debt securities, we need not comply with the covenants in the indentures, including under “Consolidation, Merger and Sale” and, in the case of the subordinated note indenture, the provisions relating to subordination. In addition, covenant defeasance would also render ineffective any Event of Default provisions relating to any restrictive covenants. Any of our other obligations affected by covenant defeasance will be specified in the prospectus supplement.

In order to exercise the covenant defeasance option, we must put into place the same deposit in trust and opinion delivery arrangements as discussed above under “Defeasance and Discharge”.

Subordination

Any subordinated debt securities issued under the subordinated indenture will be subordinate and junior in right of payment to all our Senior Debt whether existing at the date of the subordinated note indenture or subsequently incurred. This means that upon any payment or distribution of our assets to creditors upon any:

- liquidation;
- dissolution;
- winding up;
- reorganization;
- assignment for the benefit of creditors;
- marshaling of assets or any bankruptcy;
- insolvency; or
- debt restructuring or similar proceedings in connection with any insolvency or bankruptcy proceeding of our company,

the holders of Senior Debt will first be entitled to receive payment in full of the principal of and any premium and interest on such Senior Debt before the holders of the subordinated debt securities will be entitled to receive or retain any payment in respect of the principal of and any premium or interest on the subordinated debt securities.

[Table of Contents](#)

The same priority of payment of the Senior Debt also applies upon the acceleration of the maturity of any subordinated debt securities resulting from an Event of Default and a declaration of acceleration under the subordinated indenture. The holders of all Senior Debt outstanding at the time of such acceleration will first be entitled to receive payment in full of all amounts due thereon, including any amounts due upon acceleration, before the holders of subordinated debt securities will be entitled to receive or retain any payment in respect of the principal of or any premium or interest on the subordinated debt securities.

No payments on account of principal, or any premium or interest, in respect of the subordinated debt securities may be made if:

- there has occurred and is continuing a default in any payment with respect to Senior Debt;
- there has occurred and is continuing an event of default with respect to any Senior Debt resulting in the acceleration of the maturity thereof; or
- any judicial proceeding is pending with respect to any such default or event of default with respect to any Senior Debt.

Except as may otherwise be provided in an indenture supplement relating to a series of subordinated debt which will be described in any prospectus supplement relating to such series, the term “senior debt” shall mean (without duplication) the principal of (and premium, if any) and interest on all:

- of our indebtedness for borrowed money,
- of our obligations evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses,
- of our obligations in respect of letters of credit or bankers’ acceptances or other similar instruments (or reimbursement obligations thereto) issued for our account,
- of our obligations to pay the deferred purchase price of property or services, except trade payables incurred in the ordinary course of business,
- of our obligations as lessee under leases classified as “capitalized leases” under generally accepted accounting principles in the United States,
- obligations of third persons secured by a lien on any of our assets, whether or not we have assumed such obligations; provided that, if recourse against us with respect to such obligation is limited to the assets of ours secured by such lien, then the amount of such obligation that shall constitute “senior debt” shall be the lesser of the amount of such obligation or the fair market value of our assets securing such obligation,
- obligations of third persons guaranteed by us (but only to the extent of the amount of such guaranty), and
- of our obligations in respect of derivative products, such as interest rate, foreign exchange rate and commodity prices, forward contracts, options, swaps, collars and similar arrangements.

in each case whether existing on or after the date of the subordinated note indenture.

The term “senior debt” will not include:

- obligations of ours of the type listed above that:
 - when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse to us, and

[Table of Contents](#)

- would be “senior debt” but for the fact that the terms of the indenture supplement to the subordinated note indenture creating or evidencing a series of subordinated debt states that such obligation shall rank pari passu with such series of subordinated debt.
- any other obligations or ours which by the terms of the instrument creating or evidencing such obligation is specifically designated as being subordinated to or pari passu with one or more series of our subordinated debt securities,
- any debt securities and guarantees issued by us to any trust, partnership or other entity affiliated with us which is used by us as a financing vehicle in connection with an issuance of securities by such financing vehicle.

The indentures will place no limitation on the amount of additional Senior Debt that may be incurred by us.

Governing Law

The indentures and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act applies.

Concerning the Trustee

We may have had and may continue to have commercial and investment banking relationships with the trustee in the ordinary course of our business.

Credit Agreement and Revolving Credit Facility

On March 7, 2003, we replaced our existing credit agreement with an \$87.5 million senior credit facility entered into with a group of banks. The original credit agreement consisted of a five-year term loan up to \$32.5 million and a three-year \$55 million revolving credit facility. We pay LIBOR-based interest on funds borrowed under the term loan and funds borrowed on a revolving basis bear interest on a Prime or LIBOR-based option.

The credit agreement requires us to maintain certain financial ratios, limits the amount of additional borrowings and prohibits the payment of dividends. The credit facility is secured by substantially all of our properties and assets and those of our domestic subsidiaries.

In August 2004, the credit facility was amended to convert \$20 million of the revolver balance to a term loan (Term B loan), which matures August 31, 2005 and to reduce the credit commitment on the revolver by an equal amount. Interest on the new term loan is calculated at a rate equal to the Eurodollar Base Rate plus 3.25% until November 30, 2004, when the interest rate increases to an 18% fixed rate. The interest rate further increases by 3.0% on the last day of each fiscal quarter during which such \$20 million term loan remains outstanding, beginning with the quarter ended February 28, 2005. Our revolving credit facility was decreased to \$35 million. Upon full and complete payment of Term Loan B, availability under the revolver will increase to its original amount, subject to a permanent reduction equal to one-half of any alternative capital obtained by Matrix to refinance Term Loan B. We expect to refinance the Term Loan B prior to November 30, 2004, but cannot make any assurances that we will be able to do so.

At August 31, 2004, \$6.2 million was outstanding under the revolver, \$26.1 million was outstanding under the five-year term loan and \$20.0 million was outstanding under the Term B loan. In addition, \$8.8 million of the revolver was utilized by outstanding letters of credit, which mature in 2004 and 2005. At August 31, 2004, remaining availability under the revolver was \$20.0 million. We were paying a weighted average interest rate of 5.1% on the term loans and 5.3% on the revolver at August 31, 2004.

In connection with the August 2004 amendments to our Credit Agreement, we also amended the terms of our financial covenants that, based upon market condition prevailing at the time, caused us to believe we would be in covenant compliance through the remainder of fiscal 2005. However, due primarily to lower than expected revenues in our construction services segment and higher than expected expenses relating to collection disputes and a one time charge for expenses associated with a cost reduction program, we experienced a default as of August 31, 2004 in one of our financial covenants. In October, 2004, we further amended our credit agreement to waive such default and to ease the restrictiveness of certain of our other financial covenants for the remainder of fiscal 2005. We believe, based upon current market conditions, that we will remain in compliance with these amended financial covenants throughout the remainder of fiscal 2005.

Other Debt

In connection with the March 2003 acquisition of Hake, we deferred payment of a portion of the purchase price as security for the payment of any breaches of any representations, warranties and covenants of the sellers. As of the date of this prospectus, \$1.9 million of deferred purchase price is due on each of 2005, 2006 and 2007 and \$2.8 million is due in 2008.

DESCRIPTION OF WARRANTS WE MAY OFFER

This section describes the general terms and provisions of the warrants we may offer. We have filed as exhibits to the registration statement of which this prospectus is a part a form of warrant agreement pursuant to which warrants to purchase our common stock and any new series of preferred stock, senior debt and subordinated debt that may be authorized for issuance by our board of directors in the future will be issued. A form of each such warrant certificate has also been filed as an exhibit to such registration statement. The specific terms of any warrants we offer, including any amendments, modifications or additions to the terms of the warrant agreement or the warrants evidenced by the warrant certificates filed as exhibits to this registration statement, will be described in a prospectus supplement.

General

We may issue pursuant to the warrant agreement referred to above, warrants to purchase common stock, preferred stock, senior debt or subordinated debt, or units of these securities as may from time to time be authorized by our board of directors. We may issue warrants to purchase any of these Company securities independently or together with any common stock, preferred stock or debt securities issued by us. Any warrants issued by us together with any common stock, preferred stock or debt securities may be issued separately from such other securities or as a unit attached with such common stock, preferred stock or debt securities. We may issue warrants in such amounts or in as many distinct series as we wish. The warrants will be issued under a warrant agreement to be entered into between us and a warrant agent who will be named in the prospectus supplement relating to the warrants being offered. The warrant agreement filed as an exhibit to this registration statement will, subject to such modifications and amendments prepared by us and the Warrant Agent and described in any prospectus supplement to which such modifications and supplements relate, be the warrant agreement pursuant to which the warrants being registered hereby, will be issued. Accordingly, the description that follows pertains to both the warrants and the warrant agreement pursuant to which the warrants being registered hereby will, unless otherwise indicated in a prospectus supplement will be issued.

Specific Terms of the Warrants

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

- the title of the series of such warrants;
- the aggregate number of warrants included in such series;
- the price or prices at which the warrants of that series will be issued;
- the designation, amount, and terms of the common stock, preferred stock or debt securities purchasable upon exercise of the warrants of that series;
- if issued together as units with other securities offered by us, the date on and after which the warrants and such other securities will be separately transferable;
- the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;
- the date on which the right to exercise the warrants of that series shall commence and the date on which the right shall expire;
- with respect to warrants to purchase common stock, whether or not we will have the right to call the warrants for redemptions and, if so, the terms and conditions thereof;
- information with respect to book-entry procedures, if any;
- any provisions for adjustment of the number or amount of shares of our common stock or preferred stock, or in the principal amount of debt securities receivable upon exercise of the warrants or the exercise price of the warrants;

Table of Contents

- in the case of warrants to purchase a series of preferred stock or debt securities, the designation of such series and terms, such as liquidation, dividend, interest rate, conversion, sinking fund and voting rights, of the series of preferred stock or debt securities purchasable upon exercise of the warrants;
- the warrant agent;
- a discussion, if necessary, of any material federal income tax considerations; and
- any other material terms of the warrants, including terms, procedures, and limitations relating to the exchange and exercise of the Warrant Certificates evidencing the warrants.

Exercise of warrants

Each warrant will entitle the holder of the warrant to purchase the securities issuable upon the exercise of the warrants at the exercise price set forth in, or determinable from, the prospectus supplement relating to the warrants. Warrants may be exercised at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement or, if the warrants are redeemable, up to the close of business on the redemption date set forth in the notice given to the holders of warrants called for redemption. After the close of business on the expiration date, unexercised warrants will become void.

Upon receipt by the warrant agent of payment for the securities being purchased and of the warrant certificate evidencing the warrant properly completed and duly executed, the warrant agent will, as soon as practicable thereafter, forward the securities purchased upon such exercise to the holder of the warrant certificate or to such person as the holder may direct. If less than all of the warrants represented by a warrant certificate are exercised, a new warrant certificate will be issued to the holder of the warrant certificate for the remaining warrants.

Prior to the exercise of any warrants, holders of the warrants will not have any of the rights of holders of the securities purchasable upon exercise, including the right to vote or to receive any payments of dividends or interest on the preferred stock, common stock or debt securities purchasable upon exercise.

Warrant certificates evidencing warrants to purchase securities will be exchangeable for new warrant certificates of different authorized denominations upon satisfaction of the conditions set forth in the warrant agreement.

PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus:

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

We may sell the securities at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices relating to the prevailing market prices or at negotiated prices. The distribution of the securities may be effected from time to time in one or more transactions, by means of one or more of the following transactions:

- block trades,
- fixed-price offerings;
- at-the-market offerings,
- negotiated transactions,
- put or call option transactions relating to the securities,
- under delayed delivery contracts or other contractual commitments, or
- a combination of such methods of sale.

We may determine the price or other terms of the securities offered in this prospectus or any applicable prospectus supplement by use of an electronic auction. We will describe in the applicable prospectus supplement how any auction will determine the price or any other terms, how potential investors may participate in the auction and the nature of the obligations of the underwriter, dealer or agent.

Each time we offer securities pursuant to this prospectus, the prospectus supplement, if required, will set forth:

- the name of any underwriter, dealer or agent, if any, involved in the offer and sale of the securities;
- the terms of the offering;
- any discounts, concessions or commissions and other items that may constitute compensation received by the underwriters, dealers, agents or broker-dealers;
- any offering price for the securities being offered,
- any discounts or concessions allowed or reallocated or paid to dealers,
- any securities exchanges on which the securities will be listed; and
- the anticipated delivery date of the securities.

Underwriters, dealers or agents may receive compensation in the form of discounts, concessions or commissions from us or from our purchasers (where such persons acted as agents for the purchasers in connection with the sale of securities). The compensation received may be in excess of customary discounts, concessions or commissions. Any

[Table of Contents](#)

underwriters, dealers, agents or other purchasers participating in the distribution of the securities may be considered “underwriters” under the Securities Act of 1933, as amended. As a result, discounts, commissions, or profits on resale received by them on the sale of the securities may be treated as underwriting discounts and commissions.

Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification by us against certain civil liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribution with respect to payments made by the underwriters, dealers or agents, under agreements between us and the underwriters, dealers and agents.

We may grant underwriters who participate in the distribution of securities an option to purchase additional securities to cover over-allotments, if any, in connection with the distribution. Underwriters or agents and their associates may be customers of ours or engage in transactions with, or perform services for, us in the ordinary course of business.

If underwriters or dealers are used in the sale, the securities will be acquired by the underwriters or dealers for their own account and may be resold from time to time in one or more transactions, at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, or at prices relating to such prevailing market prices, or at negotiated prices. The securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more of such firms. Unless otherwise set forth in the prospectus supplement, the obligations of the underwriters or dealers to purchase the securities offered will be subject to certain conditions precedent and the underwriters or dealers will be obligated to purchase all the offered securities if any are purchased.

The securities may be sold directly by us or through agents designated by us from time to time. Any agent involved in the offer or sale of the securities in respect of which this prospectus is delivered will be named in the prospectus supplement. Unless otherwise indicated, any such agent will be acting on a best efforts only basis for the period of its appointment.

We may engage Banc One Capital Markets, Inc., or J. P. Morgan Securities Inc. (in either case, our “Agent”), to act as agent or principal for offerings from time to time of shares of our common stock in one or more placements pursuant to a distribution agreement between us and our Agent. The terms of sales to or through our Agent pursuant to the distribution agreement will be set out in more detail in a prospectus supplement to this prospectus. When acting as agent, our Agent will use commercially reasonable efforts to sell the shares pursuant to the terms agreed to with us, including the number of shares to be offered in the placement and any minimum price below which sales may not be made. Our Agent, in its capacity as agent or principal, could arrange for or make sales in privately negotiated transactions, at the market in the existing trading market for our common stock, including sales made to or through a market maker or through an electronic communications network, or in any other manner that may be deemed to be an “at the market offering” as defined in Rule 415 promulgated under the Securities Act and/or any other method permitted by law.

If we engage underwriters or agents other than our Agent to conduct at-the-market offerings, we will do so pursuant to the terms of a distribution agreement between us and such other underwriters or agents. The terms of sales to or through such other underwriters or agents may be set out in more detail in one or more prospectus supplements to this prospectus. If we enter into any such distribution agreement, then during the term of such agreement we may issue and sell shares of our common stock to or through one or more of such other underwriters or agents, which may act on an agency basis or on a principal basis. In such case, we may sell shares on a daily basis in at-the-market transactions or otherwise as we agree with such other underwriters or agents. The distribution agreement will provide that any shares of our common stock sold will be sold at prices related to the then prevailing market prices for our common stock.

The common stock sold through our Agent or any other underwriters or agents in any at-the-market offerings will be sold at prices related to the prevailing market price for such securities, and therefore exact figures regarding proceeds which will be raised or commissions to be paid are impossible to determine. We will report at least quarterly the number of shares of common stock sold to or through our Agent or any other underwriters or agents in at-the-market offerings, the net proceeds to us and the compensation paid by us to our Agent or any other underwriters or agents in connection with such sales of common stock. Pursuant to the terms of the distribution

[Table of Contents](#)

agreement with our Agent or any other distribution agreement we may enter into, we also may agree to sell, and the relevant underwriters or agents may agree to solicit offers to purchase, blocks of our common stock or other securities.

The number of shares that we may sell in at-the-market offerings pursuant to this prospectus may not exceed 10% of the aggregate market value of our outstanding voting securities held by non-affiliates on a date within 60 days prior to the filing of the registration statement of which this prospectus is a part. Accordingly, we may not sell more than 1,704,724 shares of our common stock in “at the market offerings” pursuant to this prospectus.

In connection with the offering of the securities, certain underwriters and selling group members and their respective affiliates, may engage in transactions that stabilize, maintain or otherwise affect the market price of the applicable securities. These transactions may include stabilization transactions effected in accordance with Rule 104 of Regulation M promulgated by the SEC pursuant to which these persons may bid for or purchase securities for the purpose of stabilizing their market price.

The underwriters in an offering of securities may also create a “short position” for their account by selling more securities in connection with the offering than they are committed to purchase from us. In that case, the underwriters could cover all or a portion of the short position by either purchasing securities in the open market following completion of the offering of these securities or by exercising any over-allotment option granted to them by us. In addition, any managing underwriter may impose “penalty bids” under contractual arrangements with other underwriters, which means that they can reclaim from an underwriter (or any selling group member participating in the offering) for the account of the other underwriters, the selling concession for the securities that are distributed in the offering but subsequently purchased for the account of the underwriters in the open market. Any of the transactions described in this paragraph or comparable transactions that are described in any accompanying prospectus supplement may result in the maintenance of the price of the securities at a level above that which might otherwise prevail in the open market. None of the transactions described in this paragraph or in an accompanying prospectus supplement are required to be taken by any underwriters and, if they are undertaken, may be discontinued at any time.

If indicated in the applicable prospectus supplement, we will authorize underwriters, dealers or agents to solicit offers by institutional investors to purchase securities from us pursuant to contracts providing for payment and delivery at a future date. In all cases, these purchasers must be approved by us. Unless otherwise set forth in the applicable prospectus supplement, the obligations of any purchaser under any of these contracts will not be subject to any conditions, except that the purchase of the securities must not at the time of delivery be prohibited under the laws of any jurisdiction to which that purchaser is subject and if securities also are being sold to underwriters, we must have sold to these underwriters the securities not subject to delayed delivery. Underwriters and other agents will not have any responsibility in respect of the validity or performance of these contracts.

Our common stock is listed on the Nasdaq National Market under the symbol “MTRX.” Any shares of common stock sold pursuant to a prospectus supplement will be listed on the Nasdaq National Market, subject to official notice of issuance. The preferred stock, warrants and debt securities that we may sell pursuant to this prospectus, and any prospectus supplement, will be new issues of securities with no established trading market and may or may not be listed on a national securities exchange as specified in the applicable prospectus supplement. Any underwriters or agents to or through which we may sell securities may make a market in the securities, but these underwriters or agents will not be obligated to do so and any of them may discontinue any market making at any time without notice. We cannot, therefore, give any assurance as to the liquidity of our trading market for any securities that we may sell.

Under the securities laws of some states, the securities registered by the registration statement that includes this prospectus may be sold in those states only through registered or licensed brokers or dealers.

Any person participating in the distribution of the securities registered under the registration statement that includes this prospectus will be subject to applicable provisions of the Securities Exchange Act of 1934, and the applicable rules and regulations of the SEC, including, among others, Regulation M noted above, which may limit the timing of purchases and sales of any of the securities by any such person. Furthermore, Regulation M may restrict the ability

[Table of Contents](#)

of any person engaged in the distribution of the securities to engage in market-making activities with respect to the securities. These restrictions may affect the marketability of the securities and the ability of any person or entity to engage in market-making activities with respect to the securities.

LEGAL MATTERS

Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. will pass on the validity of the securities offered by this prospectus for us. Any underwriter(s) will be represented by their own legal counsel.

EXPERTS

Ernst & Young LLP, our independent registered public accounting firm, have audited our consolidated financial statements and schedule included in our Annual Report on Form 10-K for the year ended May 31, 2004, as set forth in their report, which is incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements and schedule are incorporated by reference in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

DISCLOSURE OF COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers or persons controlling Matrix pursuant to the foregoing provisions, or otherwise, we have been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C., 20549, and at the SEC's Public Reference Rooms in Chicago, Illinois and New York, New York. Please call the SEC at 1-800-SEC-0330 for further information concerning the Public Reference Rooms. Our SEC filings are also available to the public on the SEC's Website at <http://www.sec.gov>.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933, as amended, with respect to the securities offered in connection with this prospectus. This prospectus does not contain all of the information set forth in the registration statement. We have omitted certain parts of the registration statement in accordance with the rules and regulations of the SEC. For further information with respect to us and the securities we may offer, you should refer to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document have been summarized by us and, therefore, are not necessarily complete; however, such statements do, in our opinion, contain all information that would, in light of the circumstances under which such statements were being made, be material to an investor considering an investment in the securities being offered by us in this prospectus. We encourage each prospective investor to read each contract or document filed as an exhibit to or incorporated by reference in this registration statement. You may obtain copies of the registration statement from the SEC's principal office in Washington, D.C. upon payment of the fees prescribed by the SEC, or you may examine the registration statement without charge at the offices of the SEC described above.

Our common stock is listed on the Nasdaq National Market under the symbol "MTRX." Our reports, proxy statements and other information may also be accessed through the Nasdaq web site at www.nasdaq.com.

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934:

Table of Contents

- (1) Our Annual Report on Form 10-K for the fiscal year ended May 31, 2004;
- (2) The description of our common stock is set forth in our registration statement on Form 8-A/A filed with the Commission on September 28, 1990, and any subsequent amendments or reports filed for the purpose of updating this description;
- (3) Our Current Report on Form 8-K filed with the Commission on September 16, 2004;
- (4) Our Proxy Statement for our Annual Meeting of Shareholders to be held on October 26, 2004, as filed with the Commission on September 20, 2004;
- (5) Our Current Report on Form 8-K filed with the Commission on October 7, 2004; and
- (6) Our Quarterly Report on Form 10-Q for the three months ended August 31, 2004, as filed with the Commission on October 7, 2004.

The reports and other documents that we file after the date of this prospectus and prior to the termination of this offering shall be deemed to be incorporated by reference into this prospectus and will update, supplement and supersede the information in this prospectus. You may request a copy of these filings, at no cost, by writing or telephoning our corporate secretary at the following address:

Matrix Service Company
10701 E. Ute St.
Tulsa, Oklahoma 74116-1517
(918) 838-8822

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits

Exhibits and Index of Exhibits

<u>Exhibit Number</u>	<u>Exhibit</u>
1.1	Form of Common Stock Underwriting Agreement (1)
1.2	Form of Preferred Stock Underwriting Agreement (1)
1.3	Form of Debt Securities Underwriting Agreement (1)
1.4	Form of Distribution Agreement for At-the-Market Offerings (3)
3.1	Restated Certificate of Incorporation dated September 28, 1990 (2)
3.2	Certificate of Designations, Preferences and Rights of Series B Junior Preferred Stock dated November 12, 1999 (2)
3.3	Certificate of Amendment of Restated Certificate of Incorporation dated October 31, 2000 (2)
3.4	Bylaws, as amended (Exhibit 3.2 to our Registration Statement on Form S-1 (No. 33-36081), as amended, is hereby incorporated by reference)
4.1	Form of Certificate of Designation for the Preferred Stock (together with Preferred Stock Certificate) (1)
4.2	Form of Senior Note Indenture (3)
4.3	Form of Senior Note (3)
4.4	Form of Subordinated Note Indenture (3)
4.5	Form of Subordinated Note (3)
4.6	Form of Warrant Agreement (3)
4.7	Form of Warrant Certificate for Common Stock (3)
4.8	Form of Warrant Certificate for Preferred Stock (3)
4.9	Form of Warrant Certificate for Senior Debt (3)
4.10	Form of Warrant Certificate for Subordinated Debt (3)
5.1	Opinion of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. (3)
10.1	Amended and Restated Stock Purchase Agreement and Conversion to Asset Purchase Agreement, dated August 31, 1999, by and among Matrix Service Company and Caldwell Tanks, Inc. (Exhibit 99.1 to our current report on Form 8-K (File No. 0-18716) filed September 13, 1999, is hereby incorporated by reference).
10.2	Rights Agreement (including a form of Certificate of Designation of Series B Junior participating Preferred Stock as Exhibit A thereto, a form of Right Certificate as Exhibit B thereto and a summary of Rights to Purchase Preferred Stock as Exhibit C thereto), dated November 2, 1999, (Exhibit 1 to the Company's current report on Form 8-K (File No. 0-18716) filed November 9, 1999, is hereby incorporated by reference).
10.3	Equity Interests Purchase Agreement dated as of March 7, 2003 by and among Hake Acquisition Corp., Matrix Service Company, and the Holders of the Equity Interests of The Hake Group of Companies. (Exhibit 99.1 to the Company's current report on Form 8-K (File No. 0-18216), filed March 24, 2003, is hereby incorporated by reference).
10.4	Credit Agreement dated as of March 7, 2003, by and among Matrix Service Company, the Lenders referred to therein, Bank One, Oklahoma N.A., as Agent and Wells Fargo Bank Texas, N.A., as Co-Agent. (Exhibit 99.2 to the Company's current report on Form 8-K (File No. 0-18216), filed March 24, 2003, is hereby incorporated by reference).
10.5	Amendment No. One to Credit Agreement (2)
10.6	Amendment No. Two to Credit Agreement (2)
10.7	Amendment No. Three to Credit Agreement (2)
10.8	Amendment No. Four to Credit Agreement (2)
10.9	Amendment No. Five to Credit Agreement (2)
10.10	Amendment No. Six to Credit Agreement (Exhibit 10.14 to the Company's annual report on Form 10-K (File No. 0-18216) filed August 13, 2004, is hereby incorporated by reference).

Table of Contents

<u>Exhibit Number</u>	<u>Exhibit</u>
10.11	Amendment No. Seven to Credit Agreement (Exhibit 10.4 to the Company's quarterly report on Form 10-Q (File No. 0-18216) for the quarter ended August 31, 2004, is hereby incorporated by reference) (3)
12.1	Ratio of Earnings to Fixed Charges (3)
23.1	Consent of Ernst & Young LLP (3)
23.2	Consent of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. (contained in Exhibit 5.1) (3)
24.1	Power of Attorney (2)
25.1	The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Senior Indenture (4)
25.2	The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Subordinated Indenture (4)

- (1) We will file one or more of these documents as an exhibit to a Current Report on Form 8-K as are appropriate to any securities being offered by us pursuant to a prospectus supplement to this registration statement as well as any statement of eligibility of a trustee in connection with an offering of debt securities and any opinions of Hall, Estill, Hardwick, Gable Golden & Nelson, PC, not previously filed.
- (2) Previously filed herewith.
- (3) Filed herewith.
- (4) To be incorporated herein by reference from a subsequent filing in accordance with Section 305(b)(2) of the Trust Indenture Act of 1939, as amended.

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;

(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 Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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

provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed 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.

Table of Contents

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

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 15 above, or otherwise, the Registrant has 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. 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.

The undersigned Registrant hereby undertakes that:

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

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305 (b) (2) of the Act.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tulsa, State of Oklahoma, on the 11th day of October, 2004.

MATRIX SERVICE COMPANY

October 7, 2004

/s/ Bradley S. Vetal

Bradley S. Vetal
Chairman of Board, President and Chief Executive Officer

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Bradley S. Vetal</u> Bradley S. Vetal	Chairman of Board, President, Chief Executive Officer and Director	October 11, 2004
<u>/s/ George L. Austin</u> George L. Austin	Vice President Finance, (Chief Financial Officer, Principal Financial Officer and Principal Accounting Officer	October 11, 2004
<u>/s/ *</u> Michael J. Hall	Director	October 11, 2004
<u>/s/ *</u> Hugh E. Bradley	Director	October 11, 2004
<u>/s/ *</u> Tom E. Maxwell	Director	October 11, 2004
<u>/s/ *</u> I. E. (Ed) Hendrix	Director	October 11, 2004
<u>/s/ *</u> Paul K. Lackey	Director	October 11, 2004
<u>*By: /s/ George L. Austin</u> Attorney-In-Fact		October 11, 2004

[Table of Contents](#)

Exhibit Index

<u>Exhibit Number</u>	<u>Exhibit</u>
1.1	Form of Common Stock Underwriting Agreement (1)
1.2	Form of Preferred Stock Underwriting Agreement (1)
1.3	Form of Debt Securities Underwriting Agreement (1)
1.4	Form of Distribution Agreement for At-the-Market Offerings (3)
3.1	Restated Certificate of Incorporation dated September 28, 1990 (2)
3.2	Certificate of Designations, Preferences and Rights of Series B Junior Preferred Stock dated November 12, 1999 (2)
3.3	Certificate of Amendment of Restated Certificate of Incorporation dated October 31, 2000 (2)
3.4	Bylaws, as amended (Exhibit 3.2 to our Registration Statement on Form S-1 (No. 33-36081), as amended, is hereby incorporated by reference)
4.1	Form of Certificate of Designation for the Preferred Stock (together with Preferred Stock Certificate) (1)
4.2	Form of Senior Note Indenture (3)
4.3	Form of Senior Note (3)
4.4	Form of Subordinated Note Indenture (3)
4.5	Form of Subordinated Note (3)
4.6	Form of Warrant Agreement (3)
4.7	Form of Warrant Certificate for Common Stock (3)
4.8	Form of Warrant Certificate for Preferred Stock (3)
4.9	Form of Warrant Certificate for Senior Debt (3)
4.10	Form of Warrant Certificate for Subordinated Debt (3)
5.1	Opinion of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. (3)
10.1	Amended and Restated Stock Purchase Agreement and Conversion to Asset Purchase Agreement, dated August 31, 1999, by and among Matrix Service Company and Caldwell Tanks, Inc. (Exhibit 99.1 to our current report on Form 8-K (File No. 0-18716) filed September 13, 1999, is hereby incorporated by reference).
10.2	Rights Agreement (including a form of Certificate of Designation of Series B Junior participating Preferred Stock as Exhibit A thereto, a form of Right Certificate as Exhibit B thereto and a summary of Rights to Purchase Preferred Stock as Exhibit C thereto), dated November 2, 1999, (Exhibit 1 to the Company's current report on Form 8-K (File No. 0-18716) filed November 9, 1999, is hereby incorporated by reference.
10.3	Equity Interests Purchase Agreement dated as of March 7, 2003 by and among Hake Acquisition Corp., Matrix Service Company, and the Holders of the Equity Interests of The Hake Group of Companies. (Exhibit 99.1 to the Company's current report on Form 8-K (File No. 0-18216), filed March 24, 2003, is hereby incorporated by reference).
10.4	Credit Agreement dated as of March 7, 2003, by and among Matrix Service Company, the Lenders referred to therein, Bank One, Oklahoma N.A., as Agent and Wells Fargo Bank Texas, N.A., as Co-Agent. (Exhibit 99.2 to the Company's current report on Form 8-K (File No. 0-18216), filed March 24, 2003, is hereby incorporated by reference)
10.5	Amendment No. One to Credit Agreement (2)
10.6	Amendment No. Two to Credit Agreement (2)
10.7	Amendment No. Three to Credit Agreement (2)
10.8	Amendment No. Four to Credit Agreement (2)
10.9	Amendment No. Five to Credit Agreement (2)
10.10	Amendment No. Six to Credit Agreement (Exhibit 10.14 to the Company's annual report on Form 10-K (File No. 0-18216) filed August 13, 2004, is hereby incorporated by reference).
10.11	Amendment No. Seven to Credit Agreement (Exhibit 10.4 to the Company's quarterly report on Form 10-Q (File No. 0-18216) for the quarter ended August 31, 2004, is hereby incorporated by reference)
12.1	Ratio of Earnings to Fixed Charges (3)
23.1	Consent of Ernst & Young LLP (3)
23.2	Consent of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. (contained in Exhibit 5.1) (3)
24.1	Power of Attorney (2)

[Table of Contents](#)

25.1 The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Senior Indenture (4)

25.2 The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Subordinated Indenture (4)

- (1) We will file one or more of these documents as an exhibit to a Current Report on Form 8-K as are appropriate to any securities being offered by us pursuant to a prospectus supplement to this registration statement as well as any statement of eligibility of a trustee in connection with an offering of debt securities and any opinions of Hall, Estill, Hardwick, Gable Golden & Nelson, PC, not previously filed.
- (2) Previously filed herewith.
- (3) Filed herewith.
- (4) To be incorporated herein by reference from a subsequent filing in accordance with Section 305(b)(2) of the Trust Indenture Act of 1939, as amended.

DISTRIBUTION AGREEMENT

_____, 2004

 Attention:

Ladies and Gentlemen:

_____, a [Delaware] corporation (the "Company"), confirms its agreement with _____, as agent ("you" or "_____") with respect to the issuance and sale from time to time by the Company, in the manner and subject to the terms and conditions described below, up to an aggregate of _____ shares (the "Maximum Number of Shares") of common stock, \$[0.01] par value per share (the "Common Stock"), of the Company. Such shares are hereinafter collectively referred to as the "Shares." The Shares are described in the Prospectus referred to below.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. _____) for the registration of at least the Maximum Number of Shares, under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Act"), and the offering of the Shares from time to time in accordance with Rule 415 under the Act, and if necessary, the Company will file such post-effective amendments thereto as may be required prior to any sale of Shares by the Company. Such registration statement, including the form of prospectus contained therein (the "Prospectus") (as so amended, if applicable) has been declared effective by the Commission and is referred to herein as the "Registration Statement." All references to the "Registration Statement" and the "Prospectus" also shall be deemed to include all documents incorporated therein by reference pursuant to item 12 of Form S-3 under the Act prior to any delivery by the Company of any Transaction Notice (as defined herein); provided, that if the Company files a registration statement with the Commission pursuant to Rule 462(b) under the Act (the "Rule 462(b) Registration Statement"), then, after such filing, all references to the "Registration Statement" also shall be deemed to include the Rule 462(b) Registration Statement. A "preliminary prospectus" shall be deemed to refer to any prospectus furnished by the Company after the Registration Statement became effective which omitted information to be included in a form of prospectus filed with the Commission pursuant to Rule 424(b) under the Act. For purposes of this Agreement, all references to the Registration Statement, Prospectus or preliminary prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

The Company and _____ agree as follows:

1. Issuance and Sale.

- (a) Upon the basis of the representations and warranties and subject to the terms and conditions set forth herein and provided the Company provides _____ with any due diligence materials and information reasonably requested by _____ necessary for _____ to satisfy its due diligence obligations, on any Exchange Business Day (as defined below) selected by the Company, (A) with respect to purchases by _____ as principal, the Company and _____ shall enter into an agreement in accordance with Section 3 hereof regarding the number of Shares to be purchased by _____ and the manner in which and the other terms upon which such sale is to occur (each such transaction being referred to as a "Principal Transaction"), and (B) with respect to sales by _____ as agent, the Company and _____ shall enter into an agreement in accordance with Section 3 hereof regarding the number of Shares to be placed by _____ and the manner in which and other terms upon which such placement is to occur (each such transaction being referred to as an "Agency Transaction" and references herein to a "Transaction" shall mean a Principal Transaction or an Agency Transaction, as the context may require). As used in this Agreement, (i) the "Term" shall be the period commencing on the date hereof and ending on the earlier of (x) _____, 200____, (y) the date on which the Maximum Number of Shares have been issued and sold pursuant to this Agreement

and (z) the termination of this Agreement pursuant to Section 9 or 10 (the "Termination Date"), (ii) an "Exchange Business Day" means any day during the Term that is a trading day for the Exchange other than a day on which trading on the Exchange is scheduled to close prior to its regular weekday closing time, and (iii) "Exchange" means the Nasdaq National Market System.

- (b) Subject to the terms and conditions set forth below, the Company appoints _____ as agent in connection with the offer and sale of Shares in any Agency Transactions entered into hereunder. _____ will use commercially reasonable efforts to sell such Shares in accordance with the terms and conditions hereof and of the applicable Transaction Notice (as defined below). The Company and _____ agree that any Shares, the placement of which _____ arranges, shall be placed by _____ in reliance on the representations, warranties, covenants and agreements of the Company contained herein and shall be subject to the terms and conditions set forth herein and in the applicable Transaction Notice. Neither the Company nor _____ shall have any obligation to enter into an Agency Transaction. The Company shall be obligated to issue and sell through _____, and _____ shall be obligated to endeavor, as provided herein and in the applicable Transaction Notice, to place Shares issued by the Company only if and when a Transaction Notice related to such an Agency Transaction has been delivered by _____ and accepted by the Company as provided in Section 3 below.
- (c) Except in the case of an Agency Transaction executed pursuant to Section 1(d) below, following acceptance of a Transaction Notice by the Company, _____ will communicate to the Company, orally, each offer to purchase Shares solicited by _____ on an agency basis. Notwithstanding the foregoing, _____ shall have the right, in its sole discretion, reasonably exercised, to reject any offer to purchase Shares, as a whole or in part, by persons solicited by _____ and any such rejection shall not be deemed a breach of _____'s agreement herein. The Company may accept or reject any proposed offer to purchase Shares, in whole or in part, and no such rejection shall be deemed a breach of the Company's agreement herein.
- (d) The Company and _____ may agree that the Shares to be placed by _____ in an Agency Transaction shall be sold in a manner constituting an "at-the-market offering" as defined in Rule 415 promulgated under the Act. In such case, _____ will confirm in writing to the Company the number of Shares sold on any Exchange Business Day and the related Agency Transaction Gross Sales Price and Net Sales Price (as each of such terms is defined in Section 3(b) below) no later than the opening of trading on the immediately following Exchange Business Day.
- (e) _____ shall make reasonable efforts to assist the Company in obtaining performance by each purchaser whose offer to purchase Shares has been solicited by _____ and accepted by the Company. If the Company shall default on its obligation to deliver Shares to a purchaser whose offer it has accepted, the Company shall (i) hold _____ harmless against any loss, claim or damage arising from or as a result of such default by the Company and (ii) notwithstanding such default, pay to _____ any fee to which it would otherwise be entitled in connection with such sale.

2. Purchases as Principal.

- (a) Any purchases of Shares to be made by _____ in a Principal Transaction shall be expressly agreed on by the Company and _____ pursuant to a Transaction Notice. Except to the extent otherwise agreed in writing by _____, _____'s commitment to purchase Shares as principal shall be deemed to have been made on the basis of the representations, warranties and covenants contained herein and shall be subject to the terms and conditions set forth herein and in the applicable Transaction Notice.
- (b) For each Principal Transaction, the Company shall sell to _____, and _____ agrees to purchase from the Company, the number of Shares determined in the manner and on the terms set forth below and in the applicable Transaction Notice. _____ intends to resell the Shares purchased under this Agreement in transactions constituting an "at-the-market offering" as defined in Rule 415 promulgated under the Act or in such other manner as may be provided in the Prospectus and

agreed in the applicable Transaction Notice, and may engage in sales of Common Stock, on the Purchase Date (as defined below) for any Shares deliverable pursuant to a Transaction Notice.

- (c) Neither the Company nor _____ shall have any obligation to enter into a Principal Transaction. The Company shall be obligated to sell Shares to _____, and _____ shall be obligated to purchase Shares from the Company only if and when a Transaction Notice related to such a Principal Transaction has been delivered by _____ and accepted by the Company as provided in Section 3 below, and upon the terms and subject to the conditions set forth herein and in the applicable Transaction Notice.

3. Transaction Notices.

- (a) The Company may, from time to time during the Term, propose to _____ that they enter into an Agency Transaction or Principal Transaction to be executed on a specified Exchange Business Day. If _____ agrees to the terms of such proposed Transaction or if the Company and _____ mutually agree to modified terms for such proposed Transaction, then _____ shall promptly send to the Company a notice, substantially in the form of Exhibit A hereto (each, a "Transaction Notice"), confirming the agreed terms of such proposed Transaction. If the Company wishes such proposed Transaction to become a binding agreement between it and _____, the Company shall promptly indicate its acceptance thereof by countersigning and returning such Transaction Notice to _____ or sending a written notice to _____ (by any means permissible under Section 12 hereof) indicating its acceptance. The terms reflected in a Transaction Notice shall become binding on _____ and the Company only if accepted by the Company no later than the times specified in Section 3(b) below. Each Transaction Notice shall specify, among other things:

(i) whether the Transaction is an Agency Transaction or a Principal Transaction;

(ii) the Exchange Business Day on which the Shares subject to such Agency or Principal Transaction are intended to be sold (the "Purchase Date");

(iii) the number of Shares that the Company intends to sell (the "Specified Number of Shares") on such Purchase Date, which shall be no less than 5% and no more than 25% of the average daily trading volume in the Common Stock on the Exchange for the thirty (30) Exchange Business Days preceding the date of delivery of the Transaction Notice;

(iv) whether the Company will grant _____ the right to elect to purchase additional Shares in accordance with Section 3(c) below;

(v) in the case of a purchase of Shares by _____ acting as principal, whether _____ shall have the option referred to in Section 3(c) below to increase the number of Shares to be sold by the Company and purchased by _____ acting as principal on such Purchase Date; and

(vi) the lowest price (if any) at which the Company shall be obligated to sell Shares in such Transaction (a "Floor Price").

A Transaction Notice shall not set forth a Specified Number of Shares that, when added to the aggregate number of Shares previously purchased and to be purchased pursuant to pending Transaction Notices (if any) hereunder, results in a total that exceeds the Maximum Number of Shares. The Company shall have responsibility for maintaining records with respect to the aggregate dollar amount of Shares sold, or for otherwise monitoring the availability of Shares for sale under the Registration Statement. There shall be no more than one Transaction Notice and one related Transaction with respect to any Purchase Date. A Transaction Notice conforming to the foregoing requirements, once accepted by the Company, shall be irrevocable, and the Company shall be obligated to sell the Specified Number of Shares (subject to increase pursuant to Section 3(c) below) and _____ shall be obligated, subject to the terms of and satisfaction of the

conditions set forth in this Agreement and such Transaction Notice, including but not limited to Section 1(e) above and Section 3(f) below, to (x) in Agency Transactions, use its commercially reasonable efforts to solicit offers for the Shares, and (y) in Principal Transactions, purchase such Shares in accordance with the terms and conditions of this Agreement and such Transaction Notice. Notwithstanding the foregoing, if the terms of any Agency Transaction or Principal Transaction contemplate that Shares shall be sold on more than one Purchase Date, then the Company and _____ shall mutually agree to such additional terms and conditions as they deem necessary in respect of such multiple Purchase Dates, and such additional terms and conditions shall be set forth in the relevant Transaction Notice and be binding to the same extent as any other terms contained therein.

- (b) The Purchase Date in respect of the Shares deliverable pursuant to any Transaction Notice shall be the Exchange Business Day next following the date on which such Transaction Notice is accepted if such acceptance occurs by 4:30 p.m. (New York time on such acceptance date); provided that if a Transaction Notice is accepted prior to 8:30 a.m. (New York time) on an Exchange Business Day (or by such later time as _____ may agree in its sole discretion), the Purchase Date in respect of such Shares shall be such date of acceptance. For Principal Transactions, the price per Share to be paid by _____ to the Company for the purchase of any such Shares pursuant to this Agreement shall be the volume weighted average price of the Shares as reported by Bloomberg LP for the relevant Purchase Date (“VWAP”) or such other price per Share based on VWAP as may be agreed upon between the Company and _____ in the Transaction Notice (the “Principal Transaction Gross Sale Price”), less _____’s commission of _____% of the Principal Transaction Gross Sale Price for all Shares sold and purchased as principal on such Purchase Date (including for any Shares sold and purchased upon exercise of any option granted pursuant to Section 3(c) below) (the Principal Transaction Gross Sale Price less _____’s commission is referred to herein as the “Net Sale Price”). For Agency Transactions, the commission shall be _____% of the actual sales price of the Shares (the “Agency Transaction Gross Sales Price”, and together with the Principal Transaction Gross Sales Price, the “Gross Sale Price”).
- (c) If specified in a Transaction Notice for a Principal Transaction, _____ will have the option to elect, by notice to the Company delivered not later than 4:30 p.m. (New York time) on the relevant Purchase Date, to increase the number of Shares to be sold by the Company and purchased by _____ acting as principal on such Purchase Date, provided that such number of Shares to be sold by the Company on any Purchase Date pursuant to this Section 3(c) shall not exceed two times the Specified Number of Shares; and provided further that such number of Shares to be sold by the Company, when added to the aggregate number of Shares previously purchased and to be purchased pursuant to pending Transaction Notices (if any) hereunder, shall not exceed the Maximum Number of Shares. The Specified Number of Shares to be sold by the Company on any Purchase Date, as it may be increased pursuant to this paragraph (c), is hereinafter referred to as the “Purchased Number of Shares” in respect of such Purchase Date.
- (d) If the Purchased Number of Shares for any Purchase Date exceeds 50% of the total number of shares of Common Stock traded on the Exchange during regular trading hours on the Purchase Date, _____ may, at its option, elect to reduce the Purchased Number of Shares to 50% of such total number of shares traded. In the event that _____ has elected to purchase Shares pursuant to Section 3(c) above, any reduction in Shares required by this Section 3(d) shall be first made from such Shares.
- (e) Payment of the Net Sales Price for Shares sold by the Company on any Purchase Date pursuant to a Transaction Notice shall be made to the Company by federal funds wire transfer to _____, ABA # _____, Credit account name: _____, credit account number: _____, further credit account name: _____, further credit account number: _____ against delivery of such Shares to: (x) the accounts specified in writing by _____ for sales made by _____ acting as agent, or (y) _____ through the facilities of the Depository Trust Company for purchase from the Company by _____ acting as principal. Such payment and delivery shall be made at or about 10:00 a.m., local time in New York, New York, on the third

Exchange Business Day (or such other day as may, from time to time, become standard industry practice for settlement of such a securities issuance) following each Purchase Date (the "Closing Date"). If the Company fails for any reason to make timely delivery of such Shares, the Company shall indemnify _____ and its successors and assigns and hold them harmless from and against any loss, damage, expense, liability or claim that _____ may incur as a result of such failure.

- (f) If, as provided in the related Transaction Notice, a Floor Price has been agreed to by the parties with respect to a Transaction, and _____ thereafter determines and notifies the Company that the Gross Sales Price for such Transaction would not be at least equal to such Floor Price, then the Company shall not be obligated to issue and sell to or through _____, and _____ shall not be obligated to purchase or place, the Specified Number of Shares for such Transaction, except that _____ may, at its option, elect to have the Gross Sales Price for such Transaction equal such Floor Price in which case the parties shall be obligated to consummate such Transaction on that basis.

4. **Representations and Warranties of the Company.** The Company represents and warrants to _____, on and as of (i) the date hereof, (ii) each date on which the Company delivers a Transaction Notice to _____, (iii) each Purchase Date, (iv) each Closing Date and (v) each date on which the Registration Statement or the Prospectus is amended or supplemented or there is filed by the Company with the Commission any document incorporated by reference into the Prospectus (each such date listed in (i) through (v), a "Representation Date") that:

- (a) the Company meets the requirements for use of Form S-3 under the Act; the Registration Statement (including any Rule 462(b) Registration Statement) has become effective under the Act and no stop order suspending the effectiveness of the Registration Statement (including any Rule 462(b) Registration Statement) has been issued under the Act and no proceedings for that purpose have been instituted or are pending or, to the Company's knowledge, are threatened by the Commission, and any request on the part of the Commission for additional information has been complied with; the Registration Statement (including any Rule 462(b) Registration Statement) and any amendments thereto (including the filing of the Company's most recent Annual Report on Form 10-K with the Commission (the "Annual Report on Form 10-K")) comply in all material respects with the requirements of the Act and do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; each preliminary prospectus and prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Act, complied when so filed in all material respects with the Act; each preliminary prospectus and the Prospectus delivered to _____ for use in connection with the offering of Shares are identical to any electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T; and neither the Prospectus nor any amendment or supplement thereto includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or the Prospectus made in reliance upon and in conformity with information furnished to the Company in writing by _____ expressly for use in the Registration Statement or the Prospectus;
- (b) the documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were filed with the Commission, complied in all material respects with the requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") and, when read together with the other information in the Prospectus, at the date of the Prospectus and at each Representation Date, did not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;
- (c) as of the date of this Agreement the Company has, and as of each Representation Date the Company will have, an authorized capitalization as set forth in the Registration Statement and the Prospectus; all of the issued and outstanding shares of capital stock of the Company (including the

Common Stock) and, to the Company's knowledge, the Subsidiaries (as defined below), have been duly and validly authorized and issued and are fully paid and non-assessable, have been issued in compliance with all applicable laws (including, but not limited to, federal and state securities laws) and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right;

- (d) the Maximum Number of Shares is less than 10% of the aggregate market value of the Company's outstanding voting stock held by non-affiliates of the Company (calculated as of a date within 60 days prior to the date of the filing of the Registration Statement);
- (e) except as disclosed in the Registration Statement, each of the Company and each subsidiary of the Company set forth on Schedule I hereto (each a "Subsidiary" and, collectively, the "Subsidiaries") has been duly incorporated or formed (as the case may be) and is validly existing as a corporation and is in good standing under the laws of its respective jurisdiction of incorporation with all requisite entity power and authority to own, lease and operate its respective properties and to conduct its respective business as conducted and as proposed to be conducted as described in the Registration Statement and Prospectus;
- (f) each of the Company and the Subsidiaries is duly qualified or registered to do business as a foreign entity in good standing in each jurisdiction in which it conducts its respective business as conducted, and as proposed to be conducted as described in the Registration Statement and Prospectus, where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to so qualify, individually or in the aggregate, would not have, or reasonably be expected to have, a material adverse effect on the business, prospects, properties, financial condition or results of operation of the Company and the Subsidiaries, taken as a whole (a "Material Adverse Effect");
- (g) the Company has no significant subsidiaries (as defined in Rule 1-02 of Regulation S-X under the Act) other than the Subsidiaries; other than the Subsidiaries the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity;
- (h) complete and correct copies of the certificates of incorporation and of the bylaws of the Company and the Subsidiaries and all amendments thereto have been delivered to _____ or included in the Registration Statement, and except as set forth in the Registration Statement no changes therein will be made during the term of this agreement;
- (i) except as disclosed in the Registration Statement, all of the outstanding equity interests of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and (except as otherwise described in this Section 4(i)) are owned by the Company subject to no security interest, mortgage, pledge, lien, encumbrance, claim or other equity or adverse claim (collectively, "Encumbrance");
- (j) except as disclosed in the Registration Statement, the Company and each of the Subsidiaries are in compliance in all material respects with all applicable laws, orders, rules, regulations, directives, decrees and judgments;
- (k) except as disclosed in the Registration Statement, neither the Company nor any of the Subsidiaries is in breach of, or in default (nor has any event occurred which with notice, lapse of time, or both would result in any breach of, or constitute a default under), under (a) its respective certificate of incorporation, charter, formation documents or by-laws or (b) in the performance or observance of any obligation, agreement, covenant or condition contained in any license, indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their properties is bound, except in the case of clause (b),

for such breaches or defaults as would not have, or reasonably be expected to have, a Material Adverse Effect, and the execution, delivery and performance of this Agreement, the issuance and sale of the Shares and the consummation of the transactions contemplated hereby will not conflict with, or result in any breach of or constitute a default under (nor constitute any event which with notice, lapse of time, or both would result in any breach of, or constitute a default under) (i) any provision of the articles of incorporation, charter, formation documents or by-laws of the Company or any of the Subsidiaries, or (ii) any provision of any license, indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any lease, contract or other material agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or their respective properties may be bound or affected, or (iii) any federal, state, local or foreign law, regulation or rule or any decree, judgment or order applicable to the Company or any of the Subsidiaries, except in the case of clauses (ii) and (iii) for such conflicts, breaches, or defaults, individually or in the aggregate, as would not have, or reasonably be expected to have, a Material Adverse Effect;

- (l) the Company has full legal right, power and authority to enter into and perform this Agreement and to consummate the transactions contemplated herein; this Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable in accordance with its terms;
- (m) the Shares have been duly authorized and, when issued, delivered and paid for as provided in this Agreement, will be validly issued and fully paid and non-assessable, free and clear of any Encumbrance (other than any Encumbrance that may be created by the purchaser of such Shares); the capital stock of the Company, including the Shares, conforms in all material respects to the description thereof contained in the Registration Statement and the Shares will conform in all material respects to the description thereof contained in the Prospectus as amended or supplemented; no person or entity holds a right to require or participate in the registration under the Act of the Shares pursuant to the Registration Statement; no person or entity has a right of participation or first refusal with respect to the sale of the Shares by the Company;
- (n) there are no contracts, agreements or understandings between the Company or its Subsidiaries and any person or entity granting such person or entity the right, contractual or otherwise, to cause the Company to issue to it, or register pursuant to the Act, any securities or shares of capital stock of the Company upon the issue and sale of the Shares to _____ hereunder, or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement, nor does any person have preemptive rights, co-sale rights, rights of first refusal or other rights to purchase any of the Shares other than those that have been expressly waived before the date hereof;
- (o) the form of certificates evidencing the Shares (to the extent such Shares are certificated) complies with all applicable legal requirements and, in all material respects, with all applicable requirements of the charter and bylaws of the Company and the requirements of the Exchange (if any);
- (p) no approval, authorization, consent or order of or filing with any federal, state or local governmental or regulatory commission, board, body, authority or agency is required in connection with (i) the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby or (ii) the sale and delivery of the Shares, other than (x) such as have been obtained, or will have been obtained on the relevant Closing Date under the Act or the 1934 Act, (y) such approvals as have been obtained in connection with the approval of the listing of the Shares on the Exchange and (z) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Shares are being offered by _____;
- (q) _____, whose report on the consolidated financial statements of the Company and the Subsidiaries is filed with the Commission as part of the Registration Statement and Prospectus,

are and were during the periods covered by their reports independent public accountants as required by the Act;

- (r) each of the Company and the Subsidiaries has all necessary licenses, authorizations, consents and approvals and has made all necessary filings required under any federal, state, local or foreign law, regulation or rule, and has obtained all necessary authorizations, consents and approvals from other persons, in order to conduct its respective business, unless the failure to possess such licenses, authorizations, consents and other governmental or regulatory authorizations and approvals, individually or in the aggregate, would not have, or reasonably be expected to have, a Material Adverse Effect; neither the Company nor any of the Subsidiaries is in violation of, in default under or has received any notice regarding a possible violation, default or revocation of any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or any of the Subsidiaries the effect of which would have, or would reasonably be expected to have, a Material Adverse Effect;
- (s) the paper format of the Prospectus and any prospectus supplement filed in connection with this Agreement that are delivered to _____ for use in connection with any Transactions occurring hereunder will be identical in all material respects to the respective versions of the Prospectus and such prospectus supplement created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T;
- (t) all legal or governmental proceedings, contracts, leases or documents of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement have been so described or filed as required (including incorporation by reference to filings made by the Company with the Commission);
- (u) except as disclosed in the Registration Statement, there are no legal or governmental proceedings pending or threatened to which the Company or any of the Subsidiaries or any of their respective officers is a party or of which any of their respective properties is subject at law or in equity, or before or by any federal, state, local or foreign governmental or regulatory commission, which, if determined adversely to the Company or any of its Subsidiaries, could result in a judgment, decree or order which could reasonably be expected to have a Material Adverse Effect or prevent consummation of the transactions contemplated hereby;
- (v) the consolidated financial statements of the Company and the Subsidiaries and the schedules thereto included or incorporated in the Registration Statement and the Prospectus present fairly in all material respects the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations and cash flows of the Company and the Subsidiaries for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States and on a consistent basis during the periods involved and in accordance with Regulation S-X promulgated by the Commission; the financial statement schedules included or incorporated by reference in the Registration Statement and the Prospectus fairly present in all material respects the information required to be shown therein; no other financial statements or schedules are required by Form S-3 or otherwise to be included in the Registration Statement or Prospectus; any pro forma financial statements and other pro forma financial information included in the Registration Statement and the Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines for pro forma financial statements, have been properly compiled on the pro forma bases set forth therein and, in the opinion of the Company, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to reflect the transaction or circumstances referred to therein; and all disclosures contained in the Registration Statement or the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the 1934 Act and Item 10 of Regulation S-K under the Act, to the extent applicable.

- (w) subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been (i) any material adverse change in the business, prospects, properties or assets described or referred to in the Registration Statement, or the results of operations, condition (financial or otherwise), business or operations of the Company and the Subsidiaries, taken as a whole, whether or not arising in the ordinary course of business, or (ii) except as otherwise expressly disclosed in the Registration Statement and Prospectus, (A) any transaction which is material to the Company or the Subsidiaries, taken as a whole, planned or entered into by the Company or any of the Subsidiaries, (B) any obligation, direct or contingent, which is material to the Company and the Subsidiaries, incurred by the Company or the Subsidiaries, taken as a whole, except obligations incurred in the ordinary course of business, (C) any change in the capital stock or outstanding indebtedness of the Company or the Subsidiaries (other than shares of Common Stock issued upon the exercise of employee or director stock options and other than repayments and reborrowings under the Company's revolving line of credit), (D) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company [(other than the Company's regular quarterly cash dividends)] or (E) any other material information required to be publicly disclosed prior to the issuance of any Shares in accordance with the 1933 Act or the 1934 Act or the rules and regulations promulgated thereunder. Neither the Company nor the Subsidiaries has any material contingent obligation which is not disclosed in the Registration Statement;
- (x) the Company has filed in a timely manner all reports required to be filed pursuant to Sections 13, 14, 15(d) of the 1934 Act during the preceding twelve calendar months and if during such period the Company has relied on Rule 12b-25(b) under the 1934 Act ("Rule 12b-25(b)") with respect to a report or a portion of a report, that report or portion of a report has actually been filed within the time period prescribed by Rule 12b-25(b);
- (y) the Company is not and, after giving effect to the offering and sale of the Shares, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (the "Investment Company Act");
- (z) except as disclosed in the Prospectus, there are no outstanding (i) securities or obligations of the Company or any of its Subsidiaries convertible into or exchangeable for any capital stock of the Company or any such Subsidiary, or (ii) warrants, rights or options to subscribe for or purchase from the Company or any such Subsidiary any such capital stock or any such convertible or exchangeable securities or obligations, or (iii) obligations of the Company or any such Subsidiary to issue any shares of capital stock, any such convertible or exchangeable securities or obligation, or any such warrants, rights or options;
- (aa) each of the Company, the Subsidiaries, and each of their respective officers, directors and controlling persons has not taken, directly or indirectly, any action which is designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares;
- (bb) the Company (i) is not required to register as a "broker" or "dealer" in accordance with the provisions of the 1934 Act or the rules and regulations thereunder, and (ii) directly, or indirectly through one or more intermediaries, does not control any member firm of the National Association of Securities Dealers, Inc. ("NASD");
- (cc) the Company has not relied upon _____ or legal counsel for _____ for any legal, tax or accounting advice in connection with the offering and sale of the Shares;
- (dd) to the Company's knowledge, all agreements between the Company or any of the Subsidiaries and third parties expressly referenced in the Prospectus are legal, valid and binding obligations of the Company or such Subsidiary, enforceable in accordance with their respective terms, except to the

- extent enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
- (ee) no relationship, direct or indirect, exists between or among the Company or any of the Subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of the Subsidiaries, on the other hand, which is required by the Act to be described in the Registration Statement and the Prospectus that is not so described;
 - (ff) with such exceptions as would not have, or would not reasonably be expected to have, a Material Adverse Effect, the Company and the Subsidiaries have good and marketable title in fee simple to all real property, if any, and good title to all personal property owned by them, in each case free and clear of all liens, security interests, pledges, charges, encumbrances, mortgages and defects of title, except such as are disclosed in the Prospectus or such as do not materially and adversely affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Company and the Subsidiaries; and any real property and buildings held under lease by the Company or any Subsidiary are held under valid, existing and binding leases, with such exceptions as are disclosed in the Registration Statement or Prospectus or are not material and do not interfere with the use made or proposed to be made of such property and buildings by the Company or such Subsidiary;
 - (gg) the Company and its Subsidiaries and their properties, assets and operations are in compliance with, and hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; there are no past, present or, to the Company's knowledge, reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that could reasonably be expected to give rise to any material costs or liabilities to the Company or the Subsidiaries under, or to interfere with or prevent compliance by the Company or the Subsidiaries with, Environmental Laws; except as would not, individually or in the aggregate, have a Material Adverse Effect, neither the Company nor any of the Subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law);
 - (hh) to the best of the Company's knowledge, the Company and each Subsidiary owns or possesses sufficient legal rights to use all patents, trademarks, service marks, tradenames, copyrights, trade secrets and licenses necessary for its business as now conducted. Except as set forth in the Registration Statement or Prospectus, neither the Company nor any Subsidiary has received any notice of infringement of or conflict with (and the Company knows of no such infringement of or conflict with) asserted rights of others with respect to any intellectual property rights that would be reasonably likely to cause a Material Adverse Effect;
 - (ii) the Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting

principles as applied in the United States and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; the Company and its Subsidiaries and any of their officers and directors, in their capacities as such, are in compliance in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder;

- (jj) each of the Company and the Subsidiaries have filed on a timely basis all material federal, state, local and foreign income and franchise tax returns required to be filed through the date hereof and have paid all taxes shown as due thereon; and no tax deficiency has been asserted against any such entity, nor does any such entity know of any tax deficiency which is likely to be asserted against any such entity which if, determined adversely to any such entity, could have a Material Adverse Effect; all tax liabilities are adequately provided for on the respective books of such entities;
- (kk) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and its affiliates has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code"); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions. No labor disturbance by or dispute with employees of the Company or any of its Subsidiaries exists or, to the best knowledge of the Company, is contemplated or threatened.
- (ll) neither the Company nor any of the Subsidiaries nor, to the best of the Company's knowledge, any agent, officer or director purporting to act on behalf of the Company or any of the Subsidiaries has at any time; (i) made any contributions to any candidate for political office, or failed to disclose fully any such contributions, in violation of law, or (ii) made any payment to any state, federal or foreign governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or allowed by applicable law, or (iii) received or retained any funds in violation of law or of a character required to be disclosed in the Prospectus;
- (mm) with respect to the offering(s) contemplated hereby, the Company has not offered shares of its Common Stock or any other securities convertible into or exchangeable or exercisable for shares of Common Stock in a manner in violation of the Act; the Company has not distributed any offering material in connection with the offer and sale of the Shares, other than the Prospectus, Registration Statement and other materials permitted by the Act or the rules and regulations promulgated thereunder;
- (nn) the Company has not incurred any liability for any finder's fees or similar payments in connection with the transactions herein contemplated;
- (oo) any certificate signed by any officer of the Company or any Subsidiary delivered to _____ or to counsel for _____ pursuant to or in connection with this Agreement shall be deemed a representation and warranty by the Company to _____ as to the matters covered thereby.

5. Certain Covenants of the Company. The Company hereby agrees with _____:

- (a) before amending or supplementing the Registration Statement or the Prospectus, or during any period of time in which a Prospectus relating to the Shares is required to be delivered under the Act, to furnish to _____ a copy of each such proposed amendment or supplement within a reasonable period of time before filing any such amendment or supplement with the Commission and the Company will consider in good faith any comments with respect thereto submitted by _____ prior to the filing of any such proposed amendment or filing;
- (b) to make no post-effective amendment or supplement to the Registration Statement or the Prospectus which shall have been disapproved by _____ by notice in writing to the Company after notice thereof and reasonable opportunity to review and comment thereon;
- (c) to prepare a Prospectus Supplement, with respect to any Shares sold by the Company pursuant to this Agreement in a form previously approved by _____ and to file such Prospectus Supplement pursuant to, and within the time periods required by, Rule 424(b) under the Act and to provide copies of the Prospectus and such Prospectus Supplement to _____ via e-mail in “.pdf” format on such filing date to an e-mail account designated by _____ and, at _____’s request, to also furnish copies of the Prospectus and such Prospectus Supplement to each exchange or market on which sales were effected as may be required by the rules or regulations of such exchange or market;
- (d) to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act for so long as the delivery of a prospectus is required in connection with the offering or sale of the Shares, and during such same period to advise _____, promptly after the Company receives notice thereof, of the time when any amendment to the Registration Statement has been filed or has become effective or any supplement to the Prospectus or any amended Prospectus has been filed with the Commission, or the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus relating to the Shares, or the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amendment or supplementation of the Registration Statement or Prospectus or for additional information; and
- (e) in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any such prospectus or suspending any such qualification, to use promptly its commercially reasonable efforts to obtain its withdrawal;
- (f) to furnish such information as may be required and otherwise to cooperate in qualifying the Shares for offering and sale under the securities or blue sky laws of such states as _____ may reasonably designate and to maintain such qualifications in effect so long as required for the distribution of the Shares; provided that the Company shall not be required to qualify as a foreign corporation, become a dealer of securities, or become subject to taxation in, or to consent to the service of process under the laws of any such state (except service of process with respect to the offering and sale of the Shares); and to promptly advise _____ of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation of any proceeding for such purpose;
- (g) to make available to _____ at its offices in New York City, as soon as practicable after the Registration Statement becomes effective, and thereafter from time to time to furnish to _____, as many copies of the Prospectus and the Prospectus Supplement (or of the Prospectus or Prospectus Supplement as amended or supplemented if the Company shall have made any amendments or supplements thereto after the effective date of the Registration Statement) as _____ may reasonably request for the purposes contemplated by the Act; and for so long as this Agreement is in effect, the Company will prepare and file promptly, subject to Section 5(b) hereof, such amendment or amendments to the Registration Statement, the Prospectus and the Prospectus Supplement as may be necessary to comply with the requirements of Section 10(a)(3) of the Act;

- (h) to furnish or make available to _____ during the term of this Agreement and for a period of two years thereafter (i) copies of any reports or other communications which the Company shall send to its stockholders or shall from time to time publish or publicly disseminate and (ii) copies of all annual, quarterly and current reports filed with the Commission on Forms 10-K, 10-Q and 8-K, or such other similar form as may be designated by the Commission, and to furnish to _____ from time to time during the term of this Agreement such other information as _____ may reasonably request regarding the Company or the Subsidiaries, in each case as soon as such reports, communications, documents or information becomes available or promptly upon the request of _____, as applicable;
- (i) if at any time during the term of this Agreement any event shall occur or condition exist as a result of which it is necessary, in the reasonable opinion of counsel for _____ or counsel for the Company, to further amend or supplement the Prospectus in order that the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein not misleading in light of the circumstances existing at the time the Prospectus is delivered to a purchaser, or if it shall be necessary, in the reasonable opinion of either such counsel, to amend or supplement the Registration Statement or the Prospectus in order to comply with the requirements of the Act, immediate notice shall be given, and confirmed in writing, to _____ to cease the solicitation of offers to purchase the Shares in _____'s capacity as agent and to cease sales of any Shares _____ may then own as principal, and the Company will promptly prepare and file with the Commission such amendment or supplement, whether by filing documents pursuant to the Act, the 1934 Act or otherwise, as may be necessary to correct such untrue statement or omission or to make the Registration Statement and Prospectus comply with such requirements;
- (j) to generally make available to its security holders as soon as practicable, but not later than 90 days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Section 11(a) under the Act) covering each twelve-month period beginning, in each case, not later than the first day of the Company's fiscal quarter next following the "effective date" (as defined in such Rule 158) of the Registration Statement with respect to each sale of Shares;
- (k) to furnish to _____ two signed copies of the Registration Statement, as initially filed with the Commission, and of all amendments thereto, including all exhibits thereto and all documents incorporated by reference therein;
- (l) to apply the net proceeds from the sale of the Shares in the manner set forth under the caption "Use of Proceeds" in the Prospectus;
- (m) the Company will not, directly or indirectly, take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares;
- (n) except as otherwise agreed between the Company and _____, to pay all costs, expenses, fees and taxes in connection with (i) the preparation and filing of the Registration Statement, each preliminary prospectus, the Prospectus, and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to _____ and to dealers (including costs of mailing and shipment), (ii) the registration, issue and delivery of the Shares, (iii) the producing, word processing and/or printing of this Agreement, any powers of Attorney and any closing documents (including compilations thereof) and the reproduction and/or printing and furnishing of copies of each thereof to _____ (including costs of mailing and shipment), (iv) the qualification of the Shares for offering and sale under state laws and the determination of their eligibility for investment under state law as aforesaid (including the reasonable legal fees and filing fees and other disbursements of counsel for _____ in connection therewith) and the printing and furnishing of copies of any blue sky surveys or legal investment surveys to _____, (v) the listing of the Shares on the Exchange and any registration thereof under the 1934 Act, (vi) any filing for review of the public offering of the Shares by the NASD, (vii) the fees and disbursements of counsel to the

Company and the fees and disbursements of counsel to _____ in connection with the negotiation and completion of this Agreement (which shall include all matters required to be completed as conditions precedent to the parties agreeing to and executing the initial Transaction hereunder) and (viii) the performance of the Company's other obligations hereunder; provided that _____ shall be responsible for any transfer taxes on resale of Shares by it, any costs and expenses associated with the sale and marketing of the Shares, and legal costs of _____ other than as specifically provided above;

- (o) with respect to the offering(s) contemplated hereby, that the Company will not offer shares of its Common Stock or any other securities convertible into or exchangeable or exercisable for shares of Common Stock in a manner in violation of the Act; the Company will not distribute any offering material in connection with the offer and sale of the Shares, other than the Prospectus, Registration Statement and other materials permitted by the Act or the rules and regulations promulgated thereunder;
- (p) During the Purchase Date for each Transaction, the Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of its Common Stock or any securities convertible into or exercisable or exchangeable for such shares or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of such shares, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of shares or such other securities, in cash or otherwise, without the prior written consent of _____, other than the Shares to be sold hereunder and any shares of Common Stock of the Company issued upon the exercise of options granted under existing employee stock option plans;
- (q) to use its reasonable best efforts to cause the Shares to be listed on the Exchange;
- (r) to use its best efforts to satisfy, or cause to be satisfied, the conditions set forth below in Section 6 on or in respect of each Closing Date hereunder; and
- (s) to advise _____ promptly after it shall have received notice or obtain knowledge thereof, of any information or fact that would alter or affect any opinion, certificate, letter or other document provided to _____ pursuant to this Agreement.

6. Execution of Agreement. _____'s obligation to execute this Agreement shall be subject to the satisfaction of the following conditions in connection with and on the intended date of the execution of this Agreement:

- (a) the Company shall have delivered to _____:
 - (i) an officer's certificate signed by two of its executive officers certifying as to the matters set forth in Exhibit B hereto;
 - (ii) an opinion of _____, counsel for the Company, addressed to _____ and dated the date of this Agreement, as to the matters set forth in Exhibit C hereto, with only such departures from such form as _____, counsel for _____, shall have approved;
 - (iii) a letter of [insert name of independent public accountants of Company], dated the date of this Agreement and addressed to _____, in a form reasonably satisfactory to _____ and its counsel;
 - (iv) evidence reasonably satisfactory to _____ and its counsel that the Registration Statement has become effective;

(v) evidence reasonably satisfactory to _____ and its counsel that the Shares have been approved for listing on the Exchange, subject only to notice of issuance at or before the time of purchase on the relevant Purchase Date;

(vi) resolutions duly adopted by the Company's board of directors, and certified by an officer of the Company, authorizing the Company's execution of this Agreement and the consummation by the Company of the transactions contemplated hereby, including the issuance of the Shares; and

(vii) such other documents as _____ shall reasonably request; and

(b) _____ shall have received the favorable opinion of _____ as to the matters set forth in Exhibit D hereto.

7. Additional Covenants of the Company. The Company further covenants and agrees with _____ as follows:

- (a) Each acceptance of a Transaction Notice by the Company shall be deemed to be an affirmation that the representations and warranties of the Company herein contained and contained in any certificate delivered to _____ pursuant hereto are true and correct at the time of such acceptance, and an undertaking that such representations and warranties will be true and correct at the time of the consummation of the purchase by _____ (subject only to Section 5(h) above), and at the time of delivery to _____ of Shares pursuant to the Transaction Notice, as though made at and as of each such time (it being understood that such representations and warranties shall relate to the Registration Statement and Prospectus as amended and supplemented to the time of such Transaction Notice); on each date during any period of time in which either a Transaction Notice is in effect or a Prospectus relating to the Shares is required to be delivered under the Act, the Company shall be deemed to affirm that the representations and warranties of the Company herein contained and contained in any certificate delivered to _____ pursuant hereto are true and correct as though made at and as of each such time (it being understood that such representations and warranties shall related to the Registration Statement and Prospectus as amended and supplemented at and as of such time);
- (b) Each time that the Registration Statement or the Prospectus shall be amended or supplemented (including by the filing of any document incorporated by reference therein, but excluding any prospectus supplement relating solely to the offering of Shares pursuant to a Transaction Notice), the Company shall furnish or cause to be furnished to _____ forthwith a certificate, dated the date of filing with the Commission or the date of effectiveness of such amendment or supplement, as applicable, in form satisfactory to _____, certifying as to the matters set forth in Exhibit B hereto at the time of the filing or effectiveness of such amendment or supplement, as applicable, as though made at and as of such time (except that such statements shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such time) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to Section 6(a)(i) hereof, modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such certificate;
- (c) Each time that the Registration Statement or the Prospectus shall be amended or supplemented (including by the filing of any document incorporated by reference therein, but excluding any prospectus supplement or Current Report on Form 8-K relating solely to the offering of Shares pursuant to a Transaction Notice), the Company shall furnish or cause to be furnished forthwith to _____ and to counsel for _____ the written opinion of _____, or other counsel satisfactory to _____, which may include the General Counsel or Assistant General Counsel of the Company, dated the date of filing with the Commission or the date of effectiveness of such amendment or supplement, as applicable, in form and substance satisfactory to _____, of the same tenor as the opinion referred to in Section 6(a)(ii) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion or, in lieu of such opinion, counsel last furnishing such opinion to _____ shall furnish

_____ with a letter substantially to the effect that _____ may rely on such last opinion to the same extent as though it was dated the date of such letter authorizing reliance (except that statements in such last opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such letter authorizing reliance);

- (d) Each time that the Registration Statement or the Prospectus shall be amended or supplemented to include additional financial information (including by the filing of any document incorporated by reference therein), the Company shall cause [insert name of independent public accountants of Company] promptly to furnish to _____ a letter, dated the date of filing with the Commission or the date of effectiveness of such amendment or supplement, as applicable, of the same tenor as the letter referred to in Section 6(a)(iv) hereof, but modified to relate to the Registration Statement and Prospectus as amended and supplemented to the date of such letter; and
- (e) (i) No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, and no order directed at any document incorporated by reference therein and no order preventing or suspending the use of any Prospectus will have been issued by the Commission, and no suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes, will have occurred and be in effect at the time the Company accepts a Transaction Notice; and (ii) the Registration Statement and the Prospectus shall not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading at the time the Company accepts a Transaction Notice.

8. Conditions of _____'s Obligation to Purchase Shares. _____'s obligation to, as the case may be, solicit purchases on an agency basis for, or purchase, the Shares pursuant to a Transaction Notice that has been accepted by the Company shall be subject to the satisfaction of the following conditions at the time of acceptance of the Transaction Notice, the time of the commencement of trading on the Exchange on the Purchase Date and at the time of closing on the Closing Date:

- (a) the representations and warranties on the part of the Company herein contained or contained in any certificate of an officer or officers of the Company delivered pursuant to the provisions hereof shall be true and correct in all respects;
- (b) the Company shall have performed and observed its covenants and other obligations hereunder in all material respects;
- (c) from the date of delivery of the Transaction Notice until the Closing Date, trading in the Common Stock on the Exchange shall not have been suspended;
- (d) from the date of this Agreement, no event or condition of a type described in Section 4(w) hereof shall have occurred or shall exist, which event or condition is not described in the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of _____ makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date on the terms and in the manner contemplated by this Agreement and the Prospectus;
- (e) Subsequent to the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded any securities or preferred stock of or guaranteed by the Company or any of its subsidiaries by any "nationally recognized statistical rating organization", as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of any securities or preferred stock of or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading);

- (f) the Shares to be issued pursuant to the Transaction Notice shall have been approved for listing on the Exchange, subject only to notice of issuance;
- (g) the Company shall have furnished evidence reasonably satisfactory to _____ and its counsel that the Registration Statement remains effective; and
- (h) no amendment or supplement to the Registration Statement or Prospectus shall have been filed to which _____ shall have objected in writing.

9. Termination by _____. This Agreement and the obligations of _____ hereunder may be terminated, in the sole and absolute discretion of _____, if at any time (i) any of the conditions specified in Section 7 shall not have been fulfilled when and as required by this Agreement to be fulfilled, or (ii) there has been since the respective dates as of which information is given in the Registration Statement, any material adverse change, or any development that is reasonably expected to cause a material adverse change, in or affecting the assets, operations, business or condition (financial or otherwise) of the Company, whether or not arising in the ordinary course of business, or (iii) there has since the date hereof occurred an outbreak or escalation of hostilities, any change in the financial markets or any other national or international calamity or crisis the effect of which, in the judgment of _____, is material and adverse and makes it impracticable or inadvisable to market or deliver the Shares or enforce contracts for the sale of the Shares, or (iv) trading in any securities of the Company has been suspended by the Commission or by the Exchange or if trading generally on the Exchange has been suspended (including automatic halt in trading pursuant to market-decline triggers other than those in which solely program trading is temporarily halted), or limitations on prices for trading (other than limitations on hours or numbers of days of trading) have been fixed, or maximum ranges for prices for securities have been required, by such Exchange or the NASD or by order of the Commission or any other governmental authority, or (v) any federal or state statute, regulation, rule or order of any court or other governmental authority has been enacted, published, decreed or otherwise promulgated which in the reasonable opinion of _____ has a Material Adverse Effect or will have a Material Adverse Effect, or (vi) any action has been taken by any federal, state or local government or agency in respect of its monetary or fiscal affairs which in the reasonable opinion of _____ has a material and adverse effect on the securities markets in the United States or (vii) a banking moratorium has been declared by federal or New York authorities.

If _____ elects to terminate this Agreement as provided in this Section 9, _____ shall promptly notify the Company of such termination by telephone, promptly confirmed by facsimile stating in reasonable detail the basis therefor. If a Transaction Notice is pending at the time of termination, _____ may declare such Transaction Notice void or may require the Company to complete the sale of Shares as specified in the Transaction Notice, at _____'s sole discretion (to the extent doing so is permitted under applicable law and regulation).

If the solicitation of purchases on an agency basis or purchase by _____ as principal of the Shares, as contemplated by this Agreement, is not carried out by _____ for any reason permitted under this Agreement or if such sale is not carried out because the Company shall be unable to comply in all material respects with any of the terms of this Agreement, the Company shall not be under any obligation or liability under this Agreement (except to the extent provided in Sections 5(m) and 11 hereof) and _____ shall be under no obligation or liability to the Company under this Agreement (except to the extent provided in Section 11 hereof) or to one another hereunder.

_____ may terminate this Agreement for any reason upon giving 30 days' prior notice to the Company. Any such termination shall be without liability of any party to any other party except that the provisions of Sections 5(j) and 11 hereof shall remain in full force and effect notwithstanding such termination.

10. Termination by Company. The Company may terminate this Agreement in its sole discretion upon 20 Exchange Business Days prior written notice to _____.

11. Indemnity and Contribution.

- (a) The Company agrees to indemnify, defend and hold harmless _____, its affiliates, directors and officers and any person who controls _____ within the meaning of Section 15 of the Act or Section 20 of the 1934 Act, and the successors and assigns of all of the foregoing persons from and

against: (i) any and all loss, liability, claim, damage and expense whatsoever, _____ or any such person may incur, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (the term "Registration Statement" for purpose of this Section 11 being deemed to include the Registration Statement as amended by any post-effective amendment thereof by the Company), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (the term "Prospectus" for the purpose of this Section 11 being deemed to include any preliminary prospectus, the Prospectus and the Prospectus as it may be amended or supplemented by the Company) or the omission or alleged omission therefrom of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) any and all loss, liability, claim, damage and expense whatsoever, _____ or such person may incur, to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and (iii) any and all expense whatsoever, _____ or any such person may incur, (including, subject to Section 11(c) hereof, the fees and disbursements of counsel) reasonably incurred in investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above; *provided, however*, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by _____ expressly for use in the Registration Statement (or any amendment thereto) or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto); and *provided, further*, that this indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of _____, or any person controlling _____, if a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any such amendment or supplement thereto, but excluding documents incorporated or deemed to be incorporated by reference therein) is provided to _____ but was not sent or given by or on behalf of _____ to such person, if such is required by law, at or prior to the written confirmation of the sale of such Shares to such person and if the Prospectus (as so amended or supplemented, but excluding documents incorporated or deemed to be incorporated by reference therein) would have corrected the defect giving rise to such loss, liability, claim, damage or expense, it being understood that this proviso shall have no application if such defect shall have been corrected in a document which is incorporated or deemed to be incorporated by reference in the Prospectus.

- (b) Indemnification of the Company. _____ agrees to indemnify, defend and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, and the successors and assigns of all of the foregoing persons, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section 11, the Company or any such person may incur, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by _____ expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).
- (c) Indemnification Procedures. Each indemnified party shall give prompt notice to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability which it may have under Section 11(a) or (b) as applicable, except to the extent it shall have been materially prejudiced by such failure and in no event shall it

relieve such indemnifying party from any liability which it may have otherwise than under Section 11(a) or (b) as applicable. An indemnifying party may participate at its own expense in the defense of such action. In no event shall the indemnifying parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) counsel for the indemnified party concludes that the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have been advised by counsel that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnification could have been sought hereunder by such indemnified party, unless such settlement (x) includes an unconditional release of such indemnified party, in form and substance reasonably satisfactory to such indemnified party, from all liability on claims that are the subject matter of such Proceeding and (y) does not include any statement as to or admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

- (d) Contribution. If the indemnification provided for in this Section 11 is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to herein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and _____ on the other from the sale to or through _____ of the Shares or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of _____ on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations; provided, however, that in no case shall _____ be responsible for any amount in excess of the total underwriting discounts and commission received by _____ in connection with the sale of the Shares to or through _____. The relative benefits received by the Company on the one hand and _____ on the other in connection with the sale of the Shares shall be deemed to be in the same proportion as the total commissions and underwriting discounts received by _____ to the date of such liability bear to the total sales price from the sale of Shares to or through _____ to the date of such liability. The relative fault of the Company on the one hand and of _____ on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by _____ and the parties relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and _____ agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation which does not take account of the considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section, no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 11, each person, if any, who controls _____ within the meaning of Section 15 of the 1933 Act shall have the same rights to contribution as _____, and each director of the Company and each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of 1933 Act, shall have the same rights to contribution as the Company.

- (e) Survival. The indemnity and contribution agreements contained in this Section 11 and the covenants, warranties and representations of the Company contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of _____, its affiliates, directors or officers or any person (including each officer or director of such person) who controls _____ within the meaning of Section 15 of the Act or Section 20 of the 1934 Act, or by or on behalf of the Company, its directors or officers or any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the 1934 Act, and the indemnity and contribution provisions contained in this Section 11 shall survive any termination of this Agreement or the issuance and delivery of the Shares.

12. Notices. All notices hereunder shall be in writing and delivered by hand, overnight courier, mail or facsimile, and if to _____, shall be sufficient in all respects if delivered to [Name of Agent], [Address], with separate copies to the attention of the Syndicate Desk and _____, Facsimile No. (____) _____, and if to the Company, shall be sufficient in all respects if delivered or sent to the Company at the offices of the Company at [Name of Company], [Address], Attn: _____, with a copy to _____, [Address], Attn: _____. Notwithstanding the foregoing, Transaction Notices shall be delivered to the Company by facsimile at (____) _____ and receipt confirmed by telephone at (____) _____ and an acceptance of a Transaction Notice shall be delivered to _____ by facsimile at (____) _____, Attention: _____ and _____ and receipt confirmed by telephone to _____ at (____) _____ and, if he is unavailable, to _____ at (____) _____.

13. Governing Law; Construction. This Agreement and any claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement ("Claim"), directly or indirectly, shall be governed by, and construed in accordance with, the laws of the State of New York, other than rules governing choice of applicable law. The Section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

14. Submission to Jurisdiction. Except as set forth below, no Claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have nonexclusive jurisdiction over the adjudication of such matters, and the Company consents to the jurisdiction of such courts and personal service with respect thereto. Each of _____ and the Company, on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates, waives all right to trial by jury in any action, proceeding or counterclaim, whether based upon contract, tort or otherwise, in any way arising out of or relating to this Agreement. The Company agrees that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts in the jurisdiction of which the Company is or may be subject, by suit upon such judgment.

15. Parties in Interest. The Agreement herein set forth has been and is made solely for the benefit of _____ and the Company and to the extent provided in Section 11 hereof the controlling persons, directors and officers referred to in such section, and their respective successors, assigns, heirs, personal representatives and executors and administrators. No other person, partnership, association or corporation (including a purchaser, as such purchaser, from _____) shall acquire or have any right under or by virtue of this Agreement.

16. Counterparts. This Agreement may be signed by the parties in one or more counterparts, which together shall constitute one and the same agreement among the parties.

17. Successors and Assigns. This Agreement shall be binding upon _____ and the Company and their successors and assigns and any successor or assign of any substantial portion of the Company's and _____'s respective businesses and/or assets.

18. Miscellaneous. _____, an indirect, wholly owned subsidiary of _____, is not a bank and is separate from any affiliated bank, including any U.S. branch or agency of _____. Because _____ is a separately incorporated entity, it is solely responsible for its own contractual obligations and commitments, including obligations with respect to sales and purchases of securities. Securities sold, offered or recommended by _____ are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by a branch or agency of _____, and are not otherwise an obligation or responsibility of a branch or agency of _____.

A lending affiliate of _____ may have lending relationships with issuers of securities underwritten or privately placed by _____. To the extent required under the securities laws, prospectuses and other disclosure documents for securities underwritten or privately placed by _____ will disclose the existence of any such lending relationships and whether the proceeds of the issue will be used to repay debts owed to affiliates of _____.

_____ and one or more of its affiliates may make markets in the Common Stock or other securities of the Company, in connection with which they may buy and sell, as agent or principal, for long or short account, shares of Common Stock or other securities of the Company, at the same time that _____ is acting as agent pursuant to this Agreement; provided that _____ acknowledges and agrees that any such transactions are not being, and shall not be deemed to have been, undertaken at the request or direction of, or for the account of, the Company, and that the Company has and shall have no control over any decision by _____ and its affiliates to enter into any such transactions.

If the foregoing correctly sets forth the understanding among the Company and _____, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement between the Company and _____.

Very truly yours,

[insert name of the Company]

By: _____
Name:
Title:

Accepted and agreed to as of the date first above written:

[Insert name of Agent]

By: _____
Name:
Title:

Subsidiaries of the Company

[_____ Letterhead]

_____, 200_

[Name of Company]

[Address]

Attention:

VIA FACSIMILE

TRANSACTION NOTICE

Dear _____:

This Notice sets forth the terms of the agreement of _____ (“_____”) with _____, a [Delaware] corporation (the “Company”) relating the issuance of up to _____ shares of the Company’s common stock, par value \$0.01 per share pursuant to the Distribution Agreement between the Company and _____, dated _____, 200_ (the “Agreement”). Unless otherwise defined below, capitalized terms defined in the Agreement shall have the same meanings when used herein.

By countersigning or otherwise indicating in writing the Company’s acceptance of this Notice (an “Acceptance”), the Company shall have agreed with _____ to engage in the following transaction:

Type of Transaction: [Agency or Principal Transaction]

Number of Shares to be Sold: _____

Minimum Price at which Shares may be Sold: _____

Date(s) on which Shares may be Sold: _____
 (“Purchase Date”)

Discount/Commission: _____

Manner in which Shares are to be Sold: [Specify “at-the-market” or other method]

Option to purchase additional Shares pursuant to Section 3(c) of Agreement: [Applicable or Not Applicable]

The Transaction set forth in this Notice will not be binding on the Company or _____ unless and until the Company delivers its Acceptance; provided, however, that neither the Company nor _____ will be bound by the terms of this Notice unless the Company delivers its Acceptance by _____ am/pm (New York time) on [the date hereof/_____, 200_].

The Transaction, if it becomes binding on the parties, shall be subject to all of the representations, warranties, covenants and other terms and conditions of the Agreement, except to the extent amended or modified hereby, all of which are expressly incorporated herein by reference.

If the foregoing conforms to your understanding of our agreement, please so indicate by providing your Acceptance in the manner contemplated by the Agreement.

Very truly yours,

[Name of Agent]

By: _____
Name:
Title:

ACCEPTED as of the date first above written

[Name of Company]

By: _____
Name:
Title:

[Note: The Company's Acceptance may also be evidenced by a separate written acceptance referencing this Notice and delivered in accordance with the Agreement]

Officers' Certificate

1. The representations and warranties of the Company in the Distribution Agreement are true and correct in all material respects as of the date hereof as though made on and as of this date;
2. The Company has performed all obligations and satisfied all conditions on its part to be performed or satisfied pursuant to the Distribution Agreement at or prior to the date hereof;
3. The Company's Registration Statement (File No. _____) under the Securities Act of 1933 has become effective; no stop order suspending the effectiveness of such Registration Statement has been issued and no proceeding for that purpose has been initiated or threatened by the Securities and Exchange Commission (the "Commission"); and all requests for additional information on the part of the Commission have been complied with; and
4. Except as otherwise disclosed in writing to _____ by the Company, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been (i) any material adverse change, or any development involving a prospective material adverse change, in the business, prospects, properties or assets described or referred to in the Registration Statement, or the results of operations, condition (financial or otherwise), business or operations of the Company and the Subsidiaries, whether or not arising in the ordinary course of business, or (ii) any transaction which is material to the Company or the Subsidiaries, planned or entered into by the Company or any of the Subsidiaries, or (iii) any obligation, direct or contingent, which is material to the Company and the Subsidiaries, incurred by the Company or the Subsidiaries, except obligations incurred in the ordinary course of business, or (iv) any material change in the capital stock or outstanding indebtedness of the Company or the Subsidiaries, or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company (other than the Company's regular quarterly cash dividends); and neither the Company nor the Subsidiaries has any material contingent obligation which is not disclosed in the Registration Statement.

[Matters to be covered in Opinion of Company Counsel]

- i. The Company has been duly incorporated and is validly existing as a corporation in corporate good standing under the laws of the State of [Delaware] and has the corporate power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, and to enter into this Agreement, to issue, sell and deliver the Shares and consummate the transactions contemplated in the Prospectus; [Good standing/corporate power and authority opinions may be required for certain significant subsidiaries]
- ii. The common stock of the Company, including the Shares, conforms in all material respects to the description thereof contained in the Registration Statement and Prospectus;
- iii. The Shares have been duly and validly authorized by the Company for offer, sale, issuance and delivery pursuant to this Agreement and, when issued and delivered against payment therefor as provided in the Distribution Agreement, will be duly and validly issued and fully paid and nonassessable;
- iv. To such counsel's knowledge, the Company is duly qualified to do business as a foreign corporation and in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to so qualify would not have a material adverse effect on the business, prospects, properties, financial condition or results of operation of the Company and its Subsidiaries taken as a whole (a "Material Adverse Effect");
- v. To such counsel's knowledge and other than as set forth in the Prospectus, there are no actions, suits, claims, investigations or proceedings pending or threatened to which the Company is a party or of which any of their respective properties is subject at law or in equity, or before or by any federal, state or local governmental or regulatory commission, board, body, authority or agency, which could prevent consummation of the transactions contemplated hereby or which are required to be described in the Registration Statement or the Prospectus but are not so described;
- vi. This Agreement has been duly authorized, executed and delivered by the Company;
- vii. The execution, delivery and performance of this Agreement, the issuance and sale of the Shares and the consummation of the transactions contemplated hereby will not conflict with, or result in any breach of or constitute a default under (nor constitute any event which with notice, lapse of time, or both would result in any breach of, or constitute a default under), any provisions of the charter or by-laws of the Company or, to such counsel's knowledge, under any provision of any license, indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any lease, contract or other agreement or instrument to which the Company is a party or by which any of them or their respective properties may be bound or affected and which have been filed by the Company with the Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are listed in the exhibit index to the Company's most recent Annual Report on Form 10-K or are subsequently filed under the Exchange Act, or under any decree, judgment or order known to such counsel to be applicable to the Company or under any federal, state or local law, regulation or rule;
- viii. No approval, authorization, consent or order of or filing with any national, state or local governmental or regulatory commission, board, body, authority or agency is required in connection with the issuance and sale of the Shares or the consummation by the Company of the transactions as contemplated hereby except such as may be required by the Act and the applicable rules and regulations thereunder, the securities or blue sky laws of the various jurisdictions in which the Shares are being offered by _____ (as to which such counsel expresses no opinion) or under the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD") (as to which such counsel expresses no opinion);

- ix. The statements set forth in Item 15 of the Registration Statement, insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly summarize the matters referred to therein in all material respects;
- x. The Company is not and, after giving effect to the offering and sale of the Shares, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”);
- xi. The documents incorporated by reference in the Prospectus or any further amendment or supplement thereto made by the Company prior to the date of delivery of such opinion (other than the financial statements and related schedules therein, as to which such counsel need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder;
- xii. The Registration Statement and the Prospectus and any further amendments and supplements thereto made by the Company prior to the date of delivery of such opinion (other than the financial statements and related schedules therein, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act and the rules and regulations of the Commission thereunder;

Such counsel shall also state that, although they do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus, except for those referred to in the opinion in paragraphs (ii) and (ix) above, nothing has come to their attention that has led them to believe (a) that, as of its effective date, the Registration Statement or, as of its date, any further amendment thereto made by the Company prior to the date of delivery of such opinion (other than the financial statements and related schedules therein, as to which such counsel need express no belief) contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (b) that, as of its date, the Prospectus and documents incorporated by reference therein or any further amendment or supplement to the Prospectus (and documents incorporated by reference therein) made by the Company prior to the time and date of delivery of such opinion (other than the financial statements and related schedules therein, as to which such counsel need express no belief) contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (c) that, as of the date of delivery of such opinion, either the Registration Statement or the Prospectus or any further amendment or supplement thereto made by the Company prior to the time and date of delivery of such opinion (other than the financial statements and related schedules therein, as to which such counsel need express no belief) contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and they do not know of any amendment to the Registration Statement required to be filed or of any contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or required to be incorporated by reference into the Prospectus or required to be described in the Registration Statement or the Prospectus which are not filed or incorporated by reference or described as required.

Matters to be covered in Opinion of [Counsel for Agent]

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of _____.
2. The Distribution Agreement has been duly authorized, executed and delivered by the Company.
3. The Shares have been duly authorized and, upon delivery to _____ against payment therefor in accordance with the terms of the Distribution Agreement, will be validly issued, fully paid and nonassessable, and the issuance of the Shares is not subject to preemptive rights.

In addition, we have participated in conferences with your representatives and with representatives of the Company, its counsel and its accountants concerning the Registration Statement and the Prospectus and have considered the matters required to be stated therein and the statements contained therein, although (i) we have not independently verified the accuracy, completeness or fairness of such statements and (ii) with your consent, our inquiries with respect to the matters referred to in this paragraph have been limited in scope, because our review of the Company's corporate records, documents and instruments has been limited to (A) the documents referred to in clauses (i) through (v) of the second paragraph of this letter, (B) the Company's filings with the Commission that are incorporated by reference into the Registration Statement, (C) the exhibits to the Registration Statement and (D) the minutes of meetings of the Company's Board of Directors held since _____, 200_. Based upon and subject to the foregoing, nothing has come to our attention that leads us to believe that the Registration Statement, at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, at the time it was filed with the Commission pursuant to Rule 424(b) under the Act or as of the date hereof, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (it being understood that we have not been requested to and do not make any comment in this paragraph with respect to the financial statements, supporting schedules, footnotes, and other financial information contained in the Registration Statement or Prospectus).

MATRIX SERVICE COMPANY

AND

AS TRUSTEE

SENIOR NOTE INDENTURE

Dated as of _____, 2004

CROSS-REFERENCE TABLE

Section of Trust Indenture Act of 1939, as amended	Section of Indenture
310(a)	7.09
310(b)	7.08
	7.10
310(c)	Inapplicable
311(a)	7.13
311(b)	7.13
311(c)	Inapplicable
312(a)	5.01
	5.02(a)
312(b)	5.02(c)
	5.02(d)
312(c)	5.02(e)
313(a)	5.04(a)
313(b)	5.04(a)
313(c)	5.04(a)
313(d)	5.04(b)
314(a)	5.03
314(b)	Inapplicable
314(c)	13.06(a)
314(d)	Inapplicable
314(e)	13.06(b)
314(f)	Inapplicable
315(a)	7.01(b)
	7.02
315(b)	6.07
315(c)	7.01(a)
315(d)	7.01(b)
315(e)	6.08
316(a)	6.06
	8.04
316(b)	6.04
316(c)	8.01
317(a)	6.02
317(b)	4.03
318(a)	13.08

TABLE OF CONTENTS

**ARTICLE ONE
DEFINITIONS**

Section 1.01	6
--------------	---

**ARTICLE TWO
ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES**

Section 2.01	610
Section 2.02	12
Section 2.03	12
Section 2.04	14
Section 2.05	15
Section 2.06	16
Section 2.07	17
Section 2.08	17
Section 2.09	18
Section 2.10	18
Section 2.11	18
Section 2.12	20
Section 2.13	20

**ARTICLE THREE
REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS**

Section 3.01	20
Section 3.02	20
Section 3.03	22
Section 3.04	22
Section 3.05	22
Section 3.06	23

**ARTICLE FOUR
PARTICULAR COVENANTS OF THE COMPANY**

Section 4.01	23
Section 4.02	23
Section 4.03	24
Section 4.04	25
Section 4.05	25

Section 4.06		25
ARTICLE FIVE		
SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE		
Section 5.01		25
Section 5.02		25
Section 5.03		26
Section 5.04		27
ARTICLE SIX		
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT		
Section 6.01		28
Section 6.02		30
Section 6.03		31
Section 6.04		31
Section 6.05		32
Section 6.06		32
Section 6.07		33
Section 6.08		33
ARTICLE SEVEN		
CONCERNING THE TRUSTEE		
Section 7.01		34
Section 7.02		35
Section 7.03		37
Section 7.04		37
Section 7.05		37
Section 7.06		37
Section 7.07		38
Section 7.08		38
Section 7.09		38
Section 7.10		39
Section 7.11		40
Section 7.12		41
Section 7.13		41

ARTICLE EIGHT
CONCERNING THE SECURITYHOLDERS

Section 8.01	42
Section 8.02	42
Section 8.03	43
Section 8.04	43
Section 8.05	43

ARTICLE NINE
SUPPLEMENTAL INDENTURES

Section 9.01	44
Section 9.02	46
Section 9.03	47
Section 9.04	47
Section 9.05	47

ARTICLE TEN
CONSOLIDATION, MERGER AND SALE

Section 10.01	48
Section 10.02	48
Section 10.03	44

ARTICLE ELEVEN
SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONIES

Section 11.01	49
Section 11.02	51
Section 11.03	51
Section 11.04	51

ARTICLE TWELVE
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01	51
---------------	----

ARTICLE THIRTEEN
MISCELLANEOUS PROVISIONS

Section 13.01	52
Section 13.02	52
Section 13.03	52
Section 13.04	52

Section 13.05	52
Section 13.06	52
Section 13.07	53
Section 13.08	53
Section 13.09	53
Section 13.10	53
Section 13.11	53
Section 13.12	53
Section 13.13	53

THIS INDENTURE, dated as of the ____ day of _____, 2004 between MATRIX SERVICE COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and _____, a _____ banking corporation, as trustee (the "Trustee"):

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of unsecured notes or other evidences of indebtedness (hereinafter referred to as the "Securities"), in an unlimited aggregate principal amount to be issued from time to time in one or more series as in this Indenture provided, as registered Securities without coupons, to be manually authenticated by the certificate of the Trustee, and which will rank pari passu with all other unsecured debt of the Company that, by its terms, is not subordinated to indebtedness issued pursuant to this Indenture;

WHEREAS, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture;

WHEREAS, the Securities and the certificate of authentication to be borne by the Securities (the "Certificate of Authentication") are to be substantially in such forms as may be approved by a Company Order (as defined below), or set forth in this Indenture or in any indenture supplemental to this Indenture; and

WHEREAS, all acts and things necessary to make the Securities issued pursuant hereto, when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid indenture and agreement according to its terms, have been done and performed or will be done and performed prior to the issuance of such Securities, and the execution of this Indenture has been and the issuance hereunder of the Securities has been or will be prior to issuance in all respects duly authorized, and the Company, in the exercise of the legal right and power in it vested, executes this Indenture and proposes to make, execute, issue and deliver the Securities;

NOW, THEREFORE THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Securities are and are to be authenticated, issued and delivered, and in consideration of the premises, of the purchase and acceptance of the Securities by the holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit (subject to the provisions of this Indenture) of the respective holders from time to time of the Securities, without any discrimination, preference or priority of any one Security over any other by reason of priority in the time of issue, sale or negotiation thereof, or otherwise, except as provided herein, as follows:

ARTICLE ONE

DEFINITIONS

Section 1.01. The terms defined in this Section (except as in this Indenture otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture, and any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939, as amended, or which are by reference in such Act defined in the Securities Act of 1933, as amended (except as herein otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this instrument.

“Affiliate” shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities (other than securities having such voting rights only by reason of the occurrence of a contingency which has not occurred), by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. The Trustee may request and may conclusively rely upon an Officers’ Certificate to determine whether any Person is an Affiliate of any specified Person.

“Authenticating Agent” shall mean an authenticating agent with respect to all or any of the series of Securities, as the case may be, appointed with respect to all or any series of the Securities, as the case may be, by the Trustee pursuant to Section 2.10.

“Authorized Officer” shall mean the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer or any other officer or agent of the Company duly authorized by the Board of Directors to act in respect of matters relating to this Indenture.

“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 copy of a resolution certified by the Secretary or an Assistant or Attesting Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“Business Day”, with respect to any Security, shall mean any day that (a) in the Place of Payment (or in any of the Places of Payment, if more than one) in which amounts are payable as specified in the form of such Security and (b) in the city in which the Trustee administers its corporate trust business, is not a day on which banking institutions are authorized or required by law or regulation to close.

“Certificate” shall mean a certificate signed by an Authorized Officer. The Certificate need not comply with the provisions of Section 13.06.

“Commission” shall mean the Securities and Exchange Commission, as from time to time constituted and created under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) or if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body, if any, performing such duties on such date.

“Company Order” shall mean a written order signed in the name of the Company by an Authorized Officer and the Secretary or an Assistant or Attesting Secretary of the Company, pursuant to a Board Resolution establishing a series of Securities.

“Corporate Trust Office” shall mean the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of the execution of this Indenture is located _____, New York, NY _____, Attention: Corporate Trust Administration.

“Default” shall mean any event, act or condition which with notice or the passage of time, or both, would constitute an Event of Default.

“Depository” shall mean, with respect to Securities of any series, for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.01 or 2.11.

“Discount Security” shall mean any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01(b).

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

“Eligible Obligations” means (a) with respect to Securities denominated in Dollars, Governmental Obligations; or (b) with respect to Securities denominated in a currency other than Dollars or in a composite currency, such other obligations or instruments as shall be specified with respect to such Securities, as contemplated by Section 2.01.

“Event of Default” with respect to Securities of a particular series shall mean any event specified in Section 6.01, continued for the period of time, if any, therein designated.

“Exchange Act” shall mean as such term is defined in the definition of the term “Commission.”

“Global Security” shall mean, with respect to any series of Securities, a Security executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“Governmental Authority” means the government of the United States or of any State or Territory thereof or of the District of Columbia or of any county, municipality or other political subdivision of any of the foregoing, or any department, agency, authority or other instrumentality of any of the foregoing.

“Governmental Obligations” shall mean securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, 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 of 1933, as amended) as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental 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 such custodian in respect of the Governmental Obligation or the specific payment of principal of or interest on the Governmental Obligation evidenced by such depository receipt.

“Instructions” shall mean instructions acceptable to the Trustee issued pursuant to a Company Order in connection with a Periodic Offering and signed by an Authorized Officer. Instructions need not comply with the provisions of Section 13.06.

“interest” when used with respect to non-interest bearing Securities shall mean interest payable after maturity (whether at stated maturity, upon acceleration or redemption or otherwise) or after the date, if any, on which the Company becomes obligated to acquire a Security, whether by purchase or otherwise.

“Interest Payment Date” when used with respect to any installment of interest on a Security of a particular series shall mean the date specified in such Security or in a Board Resolution, Company Order or an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

“Officers’ Certificate” shall mean a certificate signed by an Authorized Officer and by the Secretary or Assistant Secretary of the Company. Each such certificate shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel for the Company. Each such opinion shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

“Outstanding”, shall mean when used with reference to Securities of any series and subject to the provisions of Section 8.04, all Securities of that series theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Securities theretofore canceled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for

cancellation; (b) Securities or portions thereof for the payment or redemption of which monies or Eligible Obligations 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 in trust by the Company (if the Company shall act as its own paying agent); provided, however, that if such Securities or portions of such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article Three provided, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Securities paid pursuant to Section 2.07 or in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07. The principal amount of a Discount Security that shall be deemed to be Outstanding for purposes of this Indenture shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof.

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

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or any Governmental Authority.

“Place of Payment” shall mean the place or places where the principal of and interest, if any, on the Securities of any series are payable as specified in accordance with Section 2.01.

“Predecessor Security” shall mean, with respect to a particular Security, every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.07 in lieu of a lost, mutilated, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, mutilated, destroyed or stolen Security.

“Required Currency” shall mean as such term is defined in Section 2.12

“Responsible Officer” when used with respect to the Trustee, means any vice president, any assistant vice president, any senior trust officer or assistant trust officer, any trust officer, or any other officer associated with the corporate trust department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred by the Trustee because of such person’s knowledge of and familiarity with the particular subject.

“Security” or “Securities” shall mean any Security or Securities, as the case may be, authenticated and delivered under this Indenture.

“Securityholder”, “holder”, “holder of Securities” or “registered holder” shall mean the person or persons in whose name or names a particular Security shall be registered on the books of the Company kept for that purpose in accordance with the terms of this Indenture.

“Security Registrar” shall mean as such term is defined in Section 2.02(b).

“series” means a series of Securities or the Securities of a series established pursuant to this Indenture and includes, if the context so requires, each Tranche thereof.

“Tranche” means Securities which (a) are of the same series and (b) have identical terms except as to principal amount and/or date of issuance.

“Trustee” shall mean _____, and, subject to the provisions of Article Seven, shall also include its successors and assigns, and, if at any time there is more than one person acting in such capacity hereunder, “Trustee” shall mean each such person. The term “Trustee” as used with respect to a particular series of the Securities shall mean the trustee with respect to that series.

“Trust Indenture Act” shall mean, subject to the provisions of Sections 9.01, 9.02, and 10.01, the Trust Indenture Act of 1939, as amended and in effect at the date of execution of this Indenture.

“United States” means the United States of America, its territories, its possessions and other areas subject to its political jurisdiction.

ARTICLE TWO

ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued from time to time in one or more series, in one or more Tranches of such series and, unless otherwise provided in the Company Order or supplemental indenture establishing such series, each series may be re-opened for issuances of additional Securities of that series. Each series shall be authorized by a Company Order or Orders or one or more indentures supplemental hereto, which shall specify whether the Securities of such series shall be subject to a Periodic Offering. The Company Order or Orders or supplemental indenture and, in the case of a Periodic Offering, Instructions or other procedures acceptable to the Trustee specified in such Company Order or Orders, shall establish the terms of the series, which may include the following: (i) any limitations on the aggregate principal amount of the Securities to be authenticated and delivered under this Indenture as part of such series (except for Securities authenticated and delivered upon registration of transfer of, in exchange for or in lieu of other Securities of that series); (ii) the stated maturity or maturities of such series and any right to extend such date or dates; (iii) the date or dates from which interest shall accrue, the Interest Payment Dates on which such interest will be payable or the manner of determination of such Interest Payment Dates and the record date for the determination of holders to whom interest is payable on any such Interest Payment Date; (iv) the interest rate or rates (which may be fixed or variable), or method of calculation of such rate or rates, for such series; (v) the terms, if any, regarding the redemption, purchase or repayment of such series (whether at the option of the Company or a holder of the Securities of such series and whether

pursuant to a sinking fund or analogous provisions, including payments made in cash in anticipation of future sinking fund obligations), including redemption, purchase or repayment date or dates of such series, if any, and the price or prices and other terms and conditions applicable to such redemption, purchase or repayment (including any premium); (vi) whether or not the Securities of such series shall be issued in whole or in part in the form of a Global Security and, if so, the Depositary for such Global Security and the related procedures with respect to transfer and exchange of such Global Security; (vii) the designation of such series; (viii) the form of the Securities of such series; (ix) the maximum annual interest rate, if any, of the Securities permitted for such series; (x) whether or not any Events of Default or covenants in addition to or in lieu of those set forth in this Indenture shall apply; (xi) the currency or currencies, including composite currencies, in which payment of the principal of (and premium, if any) and interest on the Securities of such series shall be payable, if other than Dollars and the manner of determining the Dollar equivalent for purposes of determining Securities Outstanding; (xii) any other information necessary to complete the Securities of such series; (xiii) the establishment of any office or agency pursuant to Section 4.02 hereof and any other place or places which the principal of and interest, if any, on Securities of that series shall be payable; (xiv) if other than denominations of \$1,000 or any integral multiple thereof, the denominations in which the Securities of the series shall be issuable; (xv) the obligations or instruments, if any, which shall be considered to be Eligible Obligations in respect of the Securities of such series denominated in a currency other than Dollars or in a composite currency; (xvi) whether or not the Securities of such series shall be issued as Discount Securities and the terms thereof, including the portion of the principal amount thereof which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01(b); (xvii) if the principal, premium, if any, or interest, if any, on such Securities are to be payable, at the election of the Company or the holder thereof, in coin or currency, including composite currencies, other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election shall be made; (xviii) if the amount of payment of principal of and premium, if any, or interest, if any, on such Securities may be determined with reference to an index, formula or other method, or based on a coin or currency other than that in which the Securities are stated to be payable, the manner in which such amount shall be determined; (xix) the date or dates, if any, after which the Securities may be converted or exchanged into or for shares of the Company's common stock or another Person's securities or properties or cash and the terms for any such conversion or exchange; (xx) whether the Securities will be subject to Article 11; (xxi) any special provisions for the payment of additional amounts; (xxii) any right to defer payments of interest by extending an interest payment period and the duration of such extension; and (xxiii) any other terms of such series not inconsistent with this Indenture.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to any such Company Order or in any indentures supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Company Order, a copy of an appropriate record of the applicable Board Resolution shall be certified by the Secretary or an Assistant or Attesting Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order setting forth the terms of that series.

Section 2.02. The Securities of any series shall be in substantially of the form (i) as set forth in one or more indentures supplemental hereto or as provided in a Company Order, or (ii) with respect to any Tranche of Securities of a series subject to Periodic Offering, to the extent permitted by any of the documents referred to in clause (i) above, in Instructions, or by other procedures acceptable to the Trustee specified in such Company Order or Orders, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation 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 or appropriate 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 Securities of that series may be listed or of the Depository, or to conform to general usage or as may, consistent herewith, be determined by the Authorized Officers executing the same as evidenced by their execution of the Securities.

The Trustee's Certificate of Authentication shall be in substantially the following form:

This is one of the Securities of the series designated in accordance with, and referred to in, the within-mentioned Indenture.

Dated:

_____, as Trustee

By: _____
Authorized Signatory

Section 2.03. The Securities shall be issuable as registered Securities and in the denominations of \$1,000 or any integral multiple thereof, subject to Sections 2.01(xi) and (xiv). The Securities of a particular series shall bear interest payable on the dates and at the rate or rates specified with respect to that series. Except as otherwise specified as contemplated by Section 2.01, the principal of and the interest on the Securities of any series, as well as any premium thereon in case of redemption thereof prior to maturity, shall be payable in Dollars at the office or agency of the Company maintained for that purpose. Each Security shall be dated the date of its authentication.

The interest installment on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Securities of that series shall be paid to the person in whose name said Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment, except that interest payable on redemption or maturity shall be payable as set forth in the Company Order or indenture supplemental hereto establishing the terms of such series of Securities. Except as otherwise specified as contemplated by Section 2.01, interest on Securities will be computed on the basis of a 360-day year of twelve 30-day months.

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Securities of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Securities to the persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefore to be mailed, first class postage prepaid, to each Securityholder at his or her address as it appears in the Security Register (as hereinafter defined), not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefore having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names such Securities (or their respective Predecessor Securities) are registered on such special record date and shall be no longer payable pursuant to the following clause (2).

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

Unless otherwise set forth in a Company Order or one or more indentures supplemental hereto establishing the terms of any series of Securities pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Securities with respect to any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the last day of the month immediately preceding the month in which an

Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

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

Section 2.04. The Securities shall, subject to the provisions of Section 2.06, be printed on steel engraved borders or fully or partially engraved, or legibly typed, as the proper officer of the Company may determine, and shall be signed on behalf of the Company by an Authorized Officer. The signature of such Authorized Officer upon the Securities may be in the form of a facsimile signature of a present or any future Authorized Officer and may be imprinted or otherwise reproduced on the Securities and for that purpose the Company may use the facsimile signature of any person who shall have been an Authorized Officer, notwithstanding the fact that at the time the Securities shall be authenticated and delivered or disposed of such person shall have ceased to be an Authorized Officer.

Only such Securities as shall bear thereon a Certificate of Authentication substantially in the form established for such Securities, executed manually by an authorized signatory of the Trustee, or by any Authenticating Agent with respect to such Securities, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate executed by the Trustee, or by any Authenticating Agent appointed by the Trustee with respect to such Securities, upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the registered holder thereof is entitled to the benefits of this Indenture.

The form Note issuable pursuant to this Indenture is attached hereto as Exhibit A, as the same may be amended by, and to reflect the terms contained in, the Company Order and the indenture supplemental hereto establishing the series of any Securities issuable pursuant to this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities and the Trustee, in accordance with such Company Order, shall authenticate and deliver such Securities; provided, however, that in the case of Securities offered in a Periodic Offering, the Trustee shall authenticate and deliver such Securities from time to time in accordance with Instructions or such other procedures acceptable to the Trustee as may be specified by or pursuant to a supplemental indenture or Company Order delivered to the Trustee prior to the time of the first authentication of Securities of such series.

In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall receive and (subject to Section 7.01) shall be fully protected in relying upon, (i) an Opinion of Counsel and (ii) an Officers' Certificate, each stating that the form and terms thereof have been established in

conformity with the provisions of this Indenture. With respect to Securities of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Company Order, Opinion of Counsel, Officers' Certificate and other documents delivered pursuant to this Section at or prior to the time of the first authentication of Securities of such series unless and until such Company Order, Opinion of Counsel, Officers' Certificate or other documents have been superseded or revoked or expire by their terms.

Each Opinion of Counsel and Officers' Certificate delivered pursuant to this Section 2.04 shall include all statements prescribed in Section 13.06(b). Such Opinion of Counsel shall also be to the effect that when such Securities have been executed by the Company and authenticated by the Trustee in accordance with the provisions of this Indenture and delivered to and duly paid for by the purchasers thereof, they will be valid and legally binding obligations of the Company, enforceable in accordance with their terms (subject to customary exceptions) and will be entitled to the benefits of this Indenture.

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

Section 2.05. (a) Securities of any series may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose, for other Securities of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section. In respect of any Securities so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefore the Security or Securities of the same series which the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose in the Borough of Manhattan, the City and State of New York, or such other location designated by the Company a register or registers (herein referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities and the transfers of Securities as in this Article provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Securities and transfer of Securities as herein provided shall be appointed as authorized by a Board Resolution, an indenture supplement hereto or Company Order (the "Security Registrar").

Upon surrender for transfer of any Security at the office or agency of the Company designated for such purpose in the Borough of Manhattan, the City and State of New York, or other location as aforesaid, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Security or Securities of the same series as the Security presented for a like aggregate principal amount.

All Securities presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Security Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Security Registrar, duly executed by the registered holder or by his duly authorized attorney in writing.

(c) Except as provided in the first paragraph of Section 2.07, no service charge shall be made for any exchange or registration of transfer of Securities, or issue of new Securities in case of partial redemption of any series, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.06, Section 3.03(b) and Section 9.04 not involving any transfer.

(d) The Company shall neither be required (i) to issue, exchange or register the transfer of any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the Outstanding Securities of the same series and ending at the close of business on the day of such mailing, nor (ii) to register the transfer of or exchange any Securities of any series or portions thereof called for redemption or as to which the holder thereof has exercised its right, if any, to require the Company to repurchase such Security in whole or in part, except that portion of such Security not required to be repurchased.

(e) The provisions of this Section 2.05 are, with respect to any Global Security, subject to Section 2.11 hereof.

Section 2.06. Pending the preparation of definitive Securities of any series, the Company may execute, and the Trustee shall authenticate and deliver, temporary Securities (printed, lithographed or typewritten) of any authorized denomination, and substantially in the form of the definitive Securities in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every temporary Security of any series 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 of such series in accordance with Section 2.04.

If temporary Securities of a series are issued, the Company will cause definitive Securities of such series to be prepared without delay. After the preparation of such definitive Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series without charge to the holders thereof (except as provided in Section 2.07), at the office or agency of the Company designated for the purpose, and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series, unless the Company advises the Trustee to the effect that definitive Securities need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder.

Section 2.07. In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon its request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Security of the same series bearing a number not contemporaneously Outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Security and of the ownership thereof. The Trustee may authenticate any such substituted Security and deliver the same upon the written request or authorization of any Authorized Officer of the Company. Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every Security issued pursuant to the provisions of this Section in substitution for any Security which is mutilated, destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.08. All Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer, or for credit against a sinking fund, shall, if surrendered to the Company or any paying agent, be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be canceled by it, and no Securities shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company, the Trustee shall deliver to the Company canceled Securities held by the Trustee. In the absence of such request the Trustee may dispose of canceled Securities in accordance with its standard procedures. If the Company shall otherwise acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.09. Nothing in this Indenture or in the Securities, express or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and the holders of the Securities, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Securities.

Section 2.10. So long as any of the Securities of any series remain Outstanding there may be an Authenticating Agent for any or all such series of Securities which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, transfer or partial redemption thereof, 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. All references in this Indenture to the authentication of Securities by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series except for authentication upon original issuance or pursuant to Section 2.07 hereof. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation which has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and which is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by Federal or State authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions it shall resign immediately.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto. The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

Section 2.11. (a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be authenticated and delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

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

(c) If at any time the Depository for a series of Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, this Section 2.11 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.05, the Trustee will authenticate and deliver Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Company may at any time in its discretion determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.11 shall no longer apply to the Securities of such series. In such event the Company will execute, and subject to Section 2.05, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be canceled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Security Registrar. The Trustee shall deliver such Securities to the Depository for delivery to the persons in whose names such Securities are so registered.

(d) Payments in respect of the principal of and interest on any series of Securities registered in the name of the Depository or its nominee will be payable to the Depository or such nominee in its capacity as the registered owner of such Global Security. The Company and the Trustee may treat the Person in whose name such series of Securities, including the Global Security, are registered as the owner thereof for the purpose of receiving such payments and for any and all other purposes whatsoever. None of the Company, the Trustee, any Security Registrar, the paying agent or any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of the beneficial ownership interests of the Global Security by the Depository or its nominee or any of the Depository's direct or indirect participants, or for maintaining, supervising or reviewing any records of the Depository, its nominee or any of its direct or indirect participants relating to the beneficial ownership interests of the Global Security, the payments to the beneficial owners of the Global Security of amounts paid to the Depository or its nominee, or any other matter relating to the actions and practices of the Depository, its nominee or any of its direct or indirect participants. None of the Company, the Trustee or any such agent

will be liable for any delay by the Depository, its nominee, or any of its direct or indirect participants in identifying the beneficial owners of any series of Securities evidenced by a Global Security, and the Company and the Trustee may conclusively rely on, and will be protected in relying on, instructions from the Depository or its nominee for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the series of Securities to be issued).

Section 2.12. In the case of the Securities of any series denominated in any currency other than Dollars or in a composite currency (the “Required Currency”), except as otherwise specified with respect to such Securities as contemplated by Section 2.01, the obligation of the Company to make any payment of the principal thereof, or the premium or interest thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including, without limitation, the risks of delay and exchange rate fluctuation, shall be borne by the Company, the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefore except in the case of its negligence or willful misconduct.

Section 2.13. The Company in issuing Securities may use “CUSIP” numbers (if then generally in use) and, if so used, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to holders of Securities; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

ARTICLE THREE

REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

Section 3.01. The Company shall not be required to redeem the Securities of any series issued hereunder except as may otherwise be set forth in the Company Order or Orders or indenture supplemental hereto as provided in Section 2.01.

Section 3.02. (a) In case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Securities of any series in accordance with the right reserved so to do, it shall give notice of such redemption to holders of the Securities of such series to be redeemed by mailing, first class postage prepaid, a notice of such redemption not less than 30 days and not more than 60 days before the date fixed for redemption of that series to such holders at their last addresses as they shall appear upon the Security Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder

receives the notice. In any case, failure duly to give such notice to the holder of any Security of any series designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Securities of such series or any other series. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption or subject to compliance with certain conditions provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with any such restriction or condition.

Unless otherwise so provided as to a particular series of Securities, if at the time of mailing of any notice of redemption the Company shall not have deposited with the paying agent an amount in cash sufficient to redeem all of the Securities called for redemption, including accrued interest to the date fixed for redemption, such notice shall state that it is subject to the receipt of redemption moneys by the paying agent before 10 a.m. Eastern Standard Time on the date fixed for redemption (unless such redemption is mandatory) and such notice shall be of no effect unless such moneys are so received on or before such date.

Each such notice of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any), specify the date fixed for redemption and the redemption price at which Securities of that series are to be redeemed, and shall state that payment of the redemption price of such Securities to be redeemed will be made at the office or agency of the Company designated in such notice, upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, that from and after said date interest will cease to accrue and that the redemption is for a sinking fund, if such is the case. If less than all the Securities of a series are to be redeemed, the notice to the holders of Securities of that series to be redeemed shall specify the particular Securities or portions of such Securities to be so redeemed. In case any Security is to be redeemed in part only, the notice which relates to such Security shall state the portion of the principal amount thereof to be redeemed, and shall state that on and after the redemption date, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

(b) The Company shall give the Trustee at least 45 days' notice in advance of the date fixed for redemption (unless the Trustee shall agree to a shorter period) and, in the case of redemption of less than all the Securities of a series, as to the aggregate principal amount of Securities of the series to be redeemed, and thereupon the Trustee shall select, by lot or in such other manner as it shall deem appropriate and fair in its discretion and which may provide for the selection of a portion or portions (equal to \$1,000 or any integral multiple thereof, subject to Sections 2.01(xi) and (xiv)) of the principal amount of such Securities of a denomination larger than \$1,000 (subject as aforesaid), the Securities to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Securities to be redeemed, in whole or in part.

The Company may, if and whenever it shall so elect, by delivery of instructions signed on its behalf by an Authorized Officer, instruct the Trustee or any paying agent to call all or any part of the Securities of a particular series for redemption and to give notice of redemption in the manner set forth in this Section, such notice to be in the name of the Company or its own

name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such paying agent, as the case may be, such Security Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section.

Section 3.03. (a) If the giving of notice of redemption shall have been completed as above provided, the Securities or portions of Securities of the series to be redeemed as specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with, subject to the Company Order or supplemental indenture hereto establishing the terms of such series of Securities, interest accrued to the date fixed for redemption and interest on such Securities or portions of Securities shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such redemption price and accrued interest with respect to any such Security or portion thereof. On presentation and surrender of such Securities on or after the date fixed for redemption at the place of payment specified in the notice, said Securities shall be paid and redeemed at the applicable redemption price for such series, together with, subject to the Company Order or supplemental indenture hereto establishing the terms of such series of Securities, interest accrued thereon to the date fixed for redemption.

(b) Upon presentation of any Security of such series which is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Security is presented shall deliver to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations in principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04. The provisions of Sections 3.04, 3.05 and 3.06 shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise specified as contemplated by Section 2.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.05. Each sinking fund payment shall be applied to the redemption of Securities of such series as provided for by the terms of Securities of such series.

Section 3.05. In lieu of making all or any part of a mandatory sinking fund payment with respect to a series of Securities in cash, and in satisfaction of all or a part of such mandatory sinking fund payment, the Company may deliver to the Trustee Securities of that series theretofore purchased or otherwise acquired by the Company and receive a credit against the amount of such mandatory sinking fund payment in an amount equal to the principal amount of the Securities of such series so delivered; provided that, the Company may not deliver or receive a credit for the delivery of any Securities of such series (i) that previously have been

purchased by the Company pursuant to a mandatory sinking fund payment, or (ii) as to which the Company has previously received a credit pursuant to this Section 3.05.

Section 3.06. Not less than 45 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 3.05 and the basis for such credit and will, together with such Officers' Certificate, deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02, except that the notice of redemption shall also state that the Securities of such series are being redeemed by operation of the sinking fund and the sinking fund payment date. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 3.03.

ARTICLE FOUR

PARTICULAR COVENANTS OF THE COMPANY

The Company covenants and agrees for each series of the Securities as follows:

Section 4.01. The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any) and interest on the Securities of that series at the time and place and in the manner provided herein and established with respect to such Securities.

Section 4.02. So long as any series of the Securities remain Outstanding, the Company agrees to maintain an office or agency with respect to each such series, which shall be in the Borough of Manhattan, the City and State of New York or at such other location or locations as may be designated as provided in this Section 4.02, where (i) Securities of that series may be presented for payment, (ii) Securities of that series may be presented as hereinabove authorized for registration of transfer and exchange, and (iii) notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by an Authorized Officer and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. The Trustee will initially act as paying agent for the Securities.

The Company also may from time to time, by written notice signed by an Authorized Officer and delivered to the Trustee, designate one or more other offices or agencies for the foregoing purposes within or outside the Borough of Manhattan, City of New York, 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 obligations to maintain an office or agency in the Borough of Manhattan, City of New York for the foregoing purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such other office or agency.

Section 4.03. (a) If the Company shall appoint one or more paying agents for all or any series of the Securities, other than the Trustee, the Company will cause each 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 all sums held by it as such agent for the payment of the principal of (and premium, if any) or interest on the Securities of that series (whether such sums have been paid to it by the Company or by any other obligor of such Securities) in trust for the benefit of the persons entitled thereto;

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

(3) that it will, at any time during the continuance of any failure referred to in the preceding paragraph (2) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(4) that it will perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to any series of the Securities, it will on or before each due date of the principal of (and premium, if any) or interest on Securities of that 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 interest so becoming due on Securities of that series until such sums shall be paid to such persons or otherwise disposed of as herein provided and will promptly notify the Trustee of such action, or any failure (by it or any other obligor on such Securities) to take such action. Whenever the Company shall have one or more paying agents for any series of Securities, it will, prior to 10 a.m. Eastern Standard Time on each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with the paying agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) Anything in this Section to the contrary notwithstanding, (i) the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 11.04 and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all

sums held in trust by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by any paying agent to the Trustee, such paying agent shall be released from all further liability with respect to such money.

Section 4.04. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.05. The Company will not, while any of the Securities remain Outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to any other Person unless the provisions of Article Ten hereof are complied with.

Section 4.06. In the event that the Company issues a Discount Security, the Company shall file with the Trustee at or prior to the time of the authentication of such Discount Security a written notice, in such form as mutually agreed upon by the Company and the Trustee, specifying the amount of original issue discount that will be accrued on such Discount Security in each calendar year from the date of issuance to the maturity thereof.

ARTICLE FIVE

SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. The Company will furnish or cause to be furnished to the Trustee (a) on each regular record date (as defined in Section 2.03) for the Securities of each Tranche of a series a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of such Tranche of Securities as of such regular record date, provided, that the Company shall not be obligated to furnish or cause to be furnished such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, no such list need be furnished for any series for which the Trustee shall be the Security Registrar.

Section 5.02. (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 Securities contained in the most recent list furnished to it as provided in Section 5.01 and as to the names and addresses of holders of Securities received by the Trustee in its capacity as Security Registrar (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(c) In case three or more holders of Securities of a series (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate

with other holders of Securities of such series or holders of all Securities with respect to their rights under this Indenture or under such Securities, and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either:

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

(2) inform such applicants as to the approximate number of holders of Securities of such series or of all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the provisions of subsection (a) of this Section 5.02, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

(d) If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each holder of such series or of all Securities, as the case may be, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of Securities of such series or of all Securities, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise, the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(e) Each and every holder of the Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities in accordance with the provisions of subsection (c) of this Section, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under said subsection (c).

Section 5.03. (a) The Company covenants and agrees to file with the Trustee, within 30 days after the Company is required to file the same with the Commission, a copy of the annual

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

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

(c) The Company covenants and agrees to transmit by mail, first class postage prepaid, or reputable over-night delivery service which provides for evidence of receipt, to the Securityholders, as their names and addresses appear upon the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) The Company covenants and agrees to furnish to the Trustee, on or before May 15 in each calendar year in which any of the Securities are Outstanding, or on or before such other day in each calendar year as the Company and the Trustee may from time to time agree upon, a certificate from the principal executive officer, principal financial officer or principal accounting officer, as to his or her knowledge, of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this subsection (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

(e) Delivery of such information, documents or reports to the Trustee pursuant to Section 5.03(a) or 5.03(b) is for informational purposes only and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including, in the case of Section 5.03(b), the Company's compliance with any of the covenants hereunder.

Section 5.04. (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each September 15th following the date of this Indenture deliver to Holders a brief report, dated as of such September 15th, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange and of any delisting thereof.

ARTICLE SIX

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

Section 6.01. (a) Whenever used herein with respect to Securities of a particular series, "Event of Default" means any one or more of the following events which has occurred and is continuing:

(1) default in the payment of any installment of interest upon any of the Securities of that series, as and when the same shall become due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an extension period);

(2) default in the payment of the principal of (or premium, if any, on) any of the Securities of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise;

(3) default in the making or satisfaction of any sinking fund payment or analogous obligation as and when the same shall become due and payable by the terms of the Securities of that series, and continuance of such default for a period of 30 days;

(4) 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 with respect to that series contained in such Securities or otherwise established with respect to that series of Securities pursuant to Section 2.01 hereof or contained in this Indenture (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of one or more series of Securities other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least twenty-five percent in aggregate principal amount of the Securities of that series at the time Outstanding;

(5) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation or reorganization of the Company under the Federal Bankruptcy Code or any other similar applicable Federal or State law, and such decree or order shall have continued unvacated and unstayed for a period of 90 consecutive days; or an involuntary case shall be commenced under such Code in respect of the Company and shall continue

undismissed for a period of 90 consecutive days or an order for relief in such case shall have been entered; or a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 consecutive days;

(6) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking liquidation or reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or State law, or shall consent to the filing of any such petition, or shall consent to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors; or

(7) the occurrence of any other Event of Default with respect to Securities of such series, as contemplated by Section 2.01(x) hereof.

(b) The Company shall file with the Trustee written notice of the occurrence of any Event of Default within five Business Days of the Company's becoming aware of any such Event of Default. In each and every such case, unless the principal of all the Securities of that series shall have already become due and payable, either the Trustee or the holders of not less than twenty-five percent 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 such Securityholders), may declare the principal (or, if any of such Securities are Discount Securities, such portion of the principal amount thereof as may be specified by their terms as contemplated by Section 2.01) of all the 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 contained in this Indenture or in the Securities of that series or established with respect to that series pursuant to Section 2.01 hereof to the contrary notwithstanding.

(c) Section 6.01(b), however, is subject to the condition that if, at any time after the principal of the Securities of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the monies 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 that series and the principal of (and premium, if any, on) any and all Securities of that series which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Securities of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and any and all defaults under the Indenture, other than the nonpayment of principal on Securities of that series which shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06, then and in every such case the

holders of a majority in aggregate principal amount of the Securities of that series then Outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences with respect to that series of Securities; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

Section 6.02. (a) The Company covenants that in case an Event of Default described in subsection 6.01(a)(1) or (a)(2) shall have occurred and be continuing, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the whole amount that then shall have become due and payable on all such Securities for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law and without duplication of any other amounts paid by the Company in respect thereof) upon overdue installments of interest at the rate per annum expressed in the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

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

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or other judicial proceedings affecting the Company, any other obligor on such Securities, or the creditors or property of either, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Securities of such series allowed for the entire amount due and payable by the Company or such other obligor under this Indenture at the date of institution of such proceedings and for any additional amount which may become due and payable by the Company or such other obligor after such date, and to collect and receive any monies or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee

under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Securityholders, to pay to the Trustee any amount due it under Section 7.06.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Securities of that series, may be enforced by the Trustee without the possession of any of such Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or 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 payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Securities of such series.

In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

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

Section 6.03. Any monies collected by the Trustee pursuant to Section 6.02 with respect to a particular series of Securities shall be applied in the order following, at the date or dates fixed by the Trustee and, in case of the distribution of such monies on account of principal (or premium, if any) or interest, upon presentation of the several Securities of that series, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

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

Third: To the Company.

Section 6.04. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or

at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to Securities of such series specifying such Event of Default, as hereinbefore provided, and unless also the holders of not less than twenty-five percent in aggregate principal amount of the Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions of this Indenture, however, the right of any holder of any Security to receive payment of the principal of (and premium, if any) and interest on such Security, as therein provided, on or after the respective due dates expressed in such Security (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder.

Section 6.05. (a) All powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any others thereof or of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Securities.

(b) No delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

Section 6.06. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding, determined in accordance with Section 8.04, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to such

series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudicial to the rights of holders of Securities of any other series at the time Outstanding determined in accordance with Section 8.04 not parties thereto. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed might involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding affected thereby, determined in accordance with Section 8.04, may on behalf of the holders of all of the Securities of such series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Securities of that series as and when the same shall become due by the terms of such Securities otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal otherwise than by acceleration and any premium has been deposited with the Trustee (in accordance with Section 6.01(c)) or a call for redemption of Securities of that series. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 6.07. The Trustee shall, within 90 days after the occurrence of a default with respect to a particular series, transmit by mail, first class postage prepaid, to the holders of Securities of that series, as their names and addresses appear upon the Security Register, notice of all defaults with respect to that series known to the Trustee, unless such defaults shall have been cured or waived before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in subsections (1), (2), (3), (4), (5), (6) and (7) of Section 6.01(a), not including any periods of grace provided for therein and irrespective of the giving of notice provided for by subsection (4) of Section 6.01(a)); provided, that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Securities of that series or in the payment of any sinking or analogous fund installment established with respect to that series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determine that the withholding of such notice is in the interests of the holders of Securities of that series; provided further, that in the case of any default of the character specified in Section 6.01(a)(4) with respect to Securities of such series no such notice to the holders of the Securities of that series shall be given until at least 30 days after the occurrence thereof.

The Trustee shall not be deemed to have knowledge of any default, except (i) a default under subsection (a)(1), (a)(2), (a)(3) or (a)(4) of Section 6.01 as long as the Trustee is acting as paying agent for such series of Securities or (ii) any default as to which the Trustee shall have received written notice or a Responsible Officer charged with the administration of this Indenture shall have obtained written notice.

Section 6.08. All parties to this Indenture agree, and each holder of each series of Securities issued pursuant to this Indenture, by his or her acceptance thereof shall be deemed to

have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, 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 Securityholder, or group of Securityholders, holding more than 10% in aggregate principal amount of the Outstanding Securities of any series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security of such series, on or after the respective due dates expressed in such Security or established pursuant to this Indenture.

ARTICLE SEVEN

CONCERNING THE TRUSTEE

Section 7.01. (a) The Trustee, prior to the occurrence of an Event of Default with respect to Securities of a series and after the curing of all Events of Default with respect to Securities of that series which may have occurred, shall undertake to perform with respect to Securities of such series such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default with respect to Securities of a series has occurred (which has not been cured or waived), the Trustee shall exercise with respect to Securities of that 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.

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

(1) prior to the occurrence of an Event of Default with respect to Securities of a series and after the curing or waiving of all such Events of Default with respect to that series which may have occurred:

(i) the duties and obligations of the Trustee shall with respect to Securities of such series be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable with respect to Securities of such series except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to Securities of such series 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 (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

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

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

(4) none of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur or risk personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Trustee reasonably believes that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it.

(c) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

Section 7.02. Except as otherwise provided in Section 7.01:

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

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an Officers' Certificate (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted 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 Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby; nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Securities (which has not been cured or waived) to exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and to 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;

(e) The Trustee shall not be liable for any action taken 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;

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, direction, order, demand, approval, bond, security, or other papers or documents, unless requested in writing so to do by the holders of not less than a majority in principal amount of the Outstanding Securities of the particular series affected thereby (determined as provided in Section 8.04); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand. Notwithstanding the foregoing, the Trustee, in its direction, may make such further inquiry or investigation into such facts or matters as it may see fit. In making any investigation required or authorized by this subparagraph, the Trustee shall be entitled to examine books, records and premises of the Company, personally or by agent or attorney;

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

(h) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty;

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

(j) 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, which certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 7.03. (a) The recitals contained herein and in the Securities (other than the Certificate of Authentication on the Securities) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities, or for the use or application of any monies paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.01, or for the use or application of any monies received by any paying agent other than the Trustee.

Section 7.04. The Trustee or any paying agent or Security Registrar, 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, paying agent or Security Registrar.

Section 7.05. Subject to the provisions of Section 11.04, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any monies received by it hereunder except such as it may agree in writing with the Company to pay thereon.

Section 7.06. (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to such compensation as shall be agreed in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and agents and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any and all loss, liability or expense, including taxes (other than taxes based upon the income of the Trustee) incurred without negligence, willful misconduct or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, or any Securityholder or any Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) The obligations of the Company under this Section to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances 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.

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

(d) The provisions of this Section 7.06 shall survive the satisfaction and discharge of this Indenture or the appointment of a successor trustee.

Section 7.07. Except as otherwise provided in 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 or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. If the Trustee has acquired or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 7.09. There shall at all times be a Trustee with respect to the Securities issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or other person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million dollars, and subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. 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 shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. 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. (a) The Trustee or any successor hereafter appointed, may at any time resign with respect to the Securities of one or more series by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Securityholders of such series, as their names and addresses appear upon the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Securities of 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 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 at the expense of the Company may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Securities of such series, or any Securityholder of that series who has been a bona fide holder of a Security or Securities for at least six months may, subject to the provisions of Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section 7.07 after written request therefore by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

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

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

then, in any such case, the Company may remove the Trustee with respect to all Securities of each series issued pursuant to this Indenture and appoint a successor trustee 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 6.08, unless, with respect to subsection (b)(1) above, the Trustee's duty to resign is stayed as provided in Section 310(b) of the Trust Indenture Act, any Securityholder who has been a bona fide holder of a Security or Securities 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. 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 any series at the time Outstanding may at any time remove the Trustee with respect to such series and appoint a 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 removal, the Trustee being removed at the expense of the Company may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities of such series.

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

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Securities of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Securities of any particular series.

Section 7.11. (a) In case of the appointment hereunder of a successor trustee with respect to all Securities, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder, subject to any prior lien provided for in Section 7.06(b).

(b) 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 retiring Trustee and each successor trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates, (2) shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any act or failure to act on the part of any other Trustee hereunder; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall with respect to the Securities of that or those series to which the appointment of such successor trustee relates have no further responsibility for the exercise of rights and powers

or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates; but, on request of the Company or any successor trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor trustee relates.

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

(d) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified under the Trust Indenture Act and eligible under this Article.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Security Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 7.12. 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 under the provisions of the Trust Indenture Act and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case 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. If and when the Trustee shall become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding collection of claims against the Company (or any other obligor upon the Securities).

ARTICLE EIGHT

CONCERNING THE SECURITYHOLDERS

Section 8.01. Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Securities of a particular series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage of that series have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Securities of that series in person or by agent or proxy appointed in writing.

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

In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, the principal amount of a Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01.

Section 8.02. Subject to the provisions of Section 7.01, proof of the execution of any instrument by a Securityholder (such proof will not require notarization) or his agent or proxy and proof of the holding by any person of any of the Securities shall be sufficient if made in the following manner:

- (a) The fact and date of the execution by any such person of any instrument may be proved in any reasonable manner acceptable to the Trustee.
- (b) The ownership of Securities shall be proved by the Security Register of such Securities or by a certificate of the Security Registrar thereof.

(c) The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

Section 8.03. Prior to the due presentment for registration of transfer of any Security, the Company, the Trustee, any paying agent and any Security Registrar may deem and treat the person in whose name such Security shall be registered upon the books of the Company as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal of and premium, if any, and (subject to Section 2.03) interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

Section 8.04. In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, Securities of that series which are owned by the Company or any other obligor on the Securities of that series or by any person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on the Securities of that series 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 direction, consent or waiver, only Securities of such series which a Responsible Officer of the Trustee actually 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 pledge's right so to act with respect to 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 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. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series specified in this Indenture in connection with such action, any holder of a Security of that series 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, 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 in exchange therefore, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series 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 of that series.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 9.01. In addition to any supplemental indenture otherwise authorized by this Indenture, 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 then in effect), without the consent of the Securityholders, for one or more of the following purposes:

(a) to evidence the succession of another person to the Company, and the assumption by any such successor of the covenants of the Company contained herein or otherwise established with respect to the Securities; or

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the holders of the Securities of all or any series and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default with respect to such series permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the holders of a majority in aggregate principal amount of the Securities of such series to waive such default; or

(c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not be inconsistent with the provisions of this Indenture and shall not materially and adversely affect the interests of the holders of the Securities of any series; or

(d) to change or eliminate any of the provisions of this Indenture or to add any new provision to this Indenture; provided, however, that such change, elimination or addition shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provisions; or

(e) to establish the form or terms of Securities of any series as permitted by Section 2.01; or

(f) to add any additional Events of Default with respect to all or any series of Outstanding Securities; or

(g) to provide collateral security for the Securities; or

(h) to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any other matters incidental thereto; or

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

(j) to change any place or places where (1) the principal of and premium, if any, and interest, if any, on all or any series of Securities shall be payable, (2) all or any series of Securities may be surrendered for registration of transfer, (3) all or any series of Securities may be surrendered for exchange and (4) notices and demands to or upon the Company in respect of all or any series of Securities and this Indenture may be served; provided, however, that any such place shall be located in New York, New York or be the principal office of the Company; or

(k) to provide for the payment by the Company of additional amounts in respect of certain taxes imposed on certain holders and for the treatment of such additional amounts as interest and for all matters incidental thereto; or

(l) to provide for the issuance of Securities denominated in a currency other than Dollars or in a composite currency and for all matters incidental thereto.

Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date of the execution and delivery of this Indenture or at any time thereafter shall be amended and

(x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Indenture shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustee may, without the consent of any Securityholders, enter into a supplemental indenture hereto to effect or evidence such changes or additional provisions; or

(y) if any such amendment shall permit one or more changes to, or the elimination of any provisions hereof which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein, this Indenture shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustee may, without the consent of any Securityholders, enter into a supplemental indenture hereto to effect such changes or elimination; or

(z) if, by reason of any such amendment, (i) one or more provisions which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein shall be deemed to be incorporated herein by reference or

otherwise made applicable hereto, and (ii) one or more provisions which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be amended herein or omitted herefrom, shall be deemed to be so amended or omitted or otherwise made applicable hereto, and the Company and the Trustee may, without the consent of any Securityholders of any series, enter into a supplemental indenture hereto to effect the changes to this Indenture deemed made pursuant to this Section 9.01(z).

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

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

Section 9.02. 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 affected by such supplemental indenture or indentures at the time Outstanding 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 then in effect) 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, however, that no such supplemental indenture shall (i) extend the fixed maturity date or dates of any Securities of any series, (ii) extend the time of payment of interest or of any sinking fund payment, other than extensions permitted pursuant to Section 2.01, (iii) reduce the rate of interest on any Security, (iv) reduce the principal amount due for payment on any Security, (v) make the principal, premium, if any, or interest on a Security payable in any coin or currency other than that provided in such Security, (vi) modify any redemption or repurchase right to the detriment of a Securityholder, (vii) impair the right of any Securityholder to institute suit for payment, (viii) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture, or reduce the percentage of Securities, the holders of which are required to waive any covenant or default and its consequences, (ix) waive any past payment default, or (x) modify any provision of Section 9.02, without the consent of the holders of each Security then Outstanding and affected thereby.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders required to consent thereto 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.

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

It shall not be necessary for the consent of the Securityholders of any series affected thereby 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 Section, the Company shall transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Securityholders of all series affected thereby as their names and addresses appear upon the Security Register. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 9.03. Upon the execution of any supplemental indenture pursuant to the provisions of this Article or of Section 10.01 with respect to any series of Securities, this Indenture shall, with respect to such series, 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 of the series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. Securities of any series, affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article, Article Two or Article Seven or of Section 10.01, may bear a notation in form approved by the Company, provided such form meets the requirements of any exchange upon which such series may be listed, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of that series so modified as to conform, in the opinion of 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 in exchange for the Securities of that series then Outstanding.

Section 9.05. The Trustee, subject to the provisions of Section 7.01, shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article is authorized or permitted by, and conforms to, the terms of this Article and that it is proper for the Trustee under the provisions of this Article to join in the execution thereof.

CONSOLIDATION, MERGER AND SALE

Section 10.01. The Company covenants that it will not merge into or consolidate with any other corporation or other Person (whether or not affiliated with the Company) or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property to any other corporation or other Person (whether or not affiliated with the Company or its successor or successors), unless (i) such other corporation or Person shall expressly assume the due and punctual payment of the principal of, and premium, if any, and interest on all the Securities of all series in accordance with the terms of each series, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture with respect to each series or established with respect to such series pursuant to Section 2.01 to be kept or performed by the Company by supplemental indenture satisfactory to the Trustee, executed and delivered to the Trustee by such corporation or Person and (ii) immediately after giving effect to such merger or consolidation, or such sale, conveyance, transfer or lease or other disposition, no Default or Event of Default shall have occurred and be continuing. Any Person may merge into or consolidate with the Company provided that the Company is the surviving corporation.

Section 10.02. (a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Securities of all series Outstanding and the due and punctual performance of all of the covenants and conditions of this Indenture or established with respect to each series of the Securities pursuant to Section 2.01 to be kept or performed by the Company with respect to each series, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and thereupon (provided, that in the case of a lease, the term of the lease is at least as long as the longest maturity of any Securities Outstanding at such time) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company or any other predecessor obligor on the Securities, 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 company, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the predecessor 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 the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

(c) Nothing contained in this Indenture or in any of the Securities shall prevent the Company from merging into itself or acquiring by purchase or otherwise all or any part of the property of any other corporation (whether or not affiliated with the Company).

The Trustee, subject to the provisions of Section 7.01, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article. Section 1.01

ARTICLE ELEVEN

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONIES

Section 11.01. Securities of a series may be defeased in accordance with their terms and, unless the Company Order or supplemental indenture establishing the series otherwise provides, in accordance with this Article.

The Company at any time may terminate as to a series of Securities all of its obligations for such series under this Indenture ("legal defeasance option"). The Company at any time may terminate as to a series of Securities its obligations, if any, under any restrictive covenant, including those contained pursuant to Sections 2.01(x) and 4.05 and Article 10, which may be applicable to a particular series ("covenant defeasance option"). However, in the case of the legal defeasance option, the Company's obligations in Sections 2.05, 2.07, 4.02, 7.06, 7.10 and 11.04 shall survive until the Securities of the series are no longer Outstanding; thereafter the Company's obligations in Sections 7.06, 7.10 and 11.04 shall survive.

The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option with respect to a series of Securities, payment of the defeased series of Securities may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option with respect to a series of Securities, payment of the defeased series of Securities may not be accelerated because of an Event of Default under Sections 6.01(a)(4) and 6.01(a)(7).

The Company may exercise as to a series its legal defeasance option or its covenant defeasance option if:

- (a) the Company irrevocably deposits in trust with the Trustee money or Eligible Obligations sufficient, without regard to the investment or re-investment thereof, for the payment of principal of, and premium, if any, and interest on, the defeased series of Securities to maturity or redemption, as the case may be;

- (b) the Company delivers to the Trustee a certificate from an Authorized Officer demonstrating that the payments of principal and interest when due on the Eligible Obligations (assuming no reinvestment) together with the money, if any deposited (assuming no investment thereof) will provide cash at such times and in such amounts as will be sufficient to pay the principal, premium and interest when due on all the Securities of such defeased series to maturity or redemption, as the case may be;
- (c) 91 days pass after the deposit is made and during the 91-day period no Default specified in Sections 6.01(a)(5) or 6.01(a)(6) with respect to the Company occurs and is continuing at the end of such 91 day period;
- (d) no Default has occurred and is continuing on the date of such deposit and after giving effect thereto;
- (e) the deposit does not constitute a default under any other agreement binding on the Company;
- (f) in the event of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that the Company has received from the Internal Revenue Service a ruling, or 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 of Counsel shall confirm that, the holders of Securities of such defeased 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 event of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of Securities of such defeased 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; and
- (h) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities of such defeased series as contemplated by this Article XI have been complied with.

In the event the Company exercises its option to effect a covenant defeasance with respect to the Securities of any series as described above and the Securities of that series are thereafter declared due and payable because of the occurrence of any Event of Default other than the Event of Default caused by failing to comply with the covenants which are defeased, the amount of money and securities on deposit with the Trustee may not be sufficient to pay amounts due on the Securities of that series at the time of the acceleration resulting from such Event of Default. However, the Company shall remain liable for such payments.

Section 11.02. All monies or Eligible Obligations deposited with the Trustee pursuant to Section 11.01 shall be held in trust and shall be available for payment as due, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the Securities of the defeased series for the payment or redemption of which such monies or Eligible Obligations have been deposited with the Trustee.

Section 11.03. In connection with the satisfaction and discharge of this Indenture all monies or Eligible Obligations then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such monies or Eligible Obligations.

Section 11.04. Any monies or Eligible Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of or premium or interest on the Securities of the defeased series that are not so applied but remain unclaimed by the holders of such Securities for two years after the date upon which the principal of (and premium, if any) or interest on such Securities shall have respectively become due and payable, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, shall be repaid to the Company on the fifth (5th) Business Day following the expiration of such two year period, or if then held in trust by the Company for such purpose, shall be discharged from such trust; and thereupon the paying agent and the Trustee shall be released from all further liability with respect to such monies or Eligible Obligations, and the holder of any Securities of the defeased series entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof.

ARTICLE TWELVE

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation or other Person, either directly or through the Company or any such predecessor or successor corporation or other Person, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation or other Person, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or

implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Securities.

ARTICLE THIRTEEN

MISCELLANEOUS PROVISIONS

Section 13.01. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 13.02. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation or Person that shall at the time be the lawful sole successor of the Company.

Section 13.03. The Company by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company under this Indenture and thereupon such power so surrendered shall terminate both as to the Company and as to any successor corporation or Person.

Section 13.04. Except as otherwise expressly provided herein any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of any one or more series of Securities to or on the Company may be given or served by being deposited first class postage prepaid in a post office letter box addressed (until another address is filed in writing by the Company with the Trustee), as follows: Matrix Service Company, 10701 E. Ute Street, Tulsa, Oklahoma 74116-1517, with a copy to: Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 S. Boston Ave., Suite 400, Tulsa, Oklahoma 74103, Attention: Larry Sandel, Esq. Any notice, election, request or demand by the Company or any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

Section 13.05. 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 construed in accordance with the laws of said State, without regard to conflicts of laws provisions thereof.

Section 13.06. (a) 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 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 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.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture (other than the certificate provided pursuant to Section 5.03(d) of this Indenture) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 13.07. Except as provided pursuant to Section 2.01 pursuant to a Company Order, or established in one or more indentures supplemental to this Indenture, in any case where the date of maturity of principal or an Interest Payment Date of any Security or the date of redemption, purchase or repayment of any Security shall not be a Business Day then payment of interest or principal (and premium, if any) may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

Section 13.08. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the Trust Indenture Act, the duties imposed by the Trust Indenture Act shall control.

Section 13.09. 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.

Section 13.10. In case any one or more of the provisions contained in this Indenture or in the Securities of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such series of Securities or the Securities of any other series, but this Indenture and such affected series of Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 13.11. The Company will have the right at all times, and without the consent of the holders of any Securities, to assign any of its rights or obligations under the Indenture to a direct or indirect wholly owned subsidiary of the Company; provided that, in the event of any such assignment, the Company will remain liable for all such obligations. This Indenture may not otherwise be assigned by the parties thereto. Subject to the foregoing, this Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns.

Section 13.12. The Article and Section Headings in this Indenture and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 13.13. Whenever this Indenture provides for any action by, or the determination of any rights of, holders of Securities of any series in which not all of such Securities are

denominated in the same currency, in the absence of any provision to the contrary in the Company Order or supplemental indenture establishing such Security of any particular series, any amount in respect of any Security denominated in a currency other than Dollars shall be treated for any such action or determination of rights as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such series (if any) for such action or determination of rights (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action or determination of rights) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

_____, as Trustee, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

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

MATRIX SERVICE COMPANY

By _____
Name:
Title:

_____,
as Trustee

By _____
Name:
Title:

REGISTERED NO.

REGISTERED

MATRIX SERVICE COMPANY
 Series _____ Notes

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

The following summary of terms is subject to the provisions set forth below:

CUSIP:		OPTIONAL EXTENTION OF ORIGINAL MATURITY DATE:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
ORIGINAL ISSUE DATE(S):		EXTENSION PERIOD:		
PRINCIPAL AMOUNT:		NUMBER OF EXTENSION PERIODS:		
MATURITY DATE:		FINAL MATURITY DATE:		
INTEREST RATE:		ORIGINAL ISSUE DISCOUNT NOTE:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
INTEREST PAYMENT DATES:		ISSUE PRICE (percentage of principal):		
RECORD DATES:		YIELD TO MATURITY:		
OPTIONAL REDEMPTION:	<input type="checkbox"/> Yes <input type="checkbox"/> No	PREMIUM DUE UPON CERTAIN PREPAYMENTS	<input type="checkbox"/> Yes	<input type="checkbox"/> No
INITIAL REDEMPTION DATE:				
AMORTIZING NOTE:	<input type="checkbox"/> Yes <input type="checkbox"/> No			
OPTION TO ELECT REPAYMENT:	<input type="checkbox"/> Yes <input type="checkbox"/> No			

Matrix Service Company, a Delaware corporation (herein called the “Company”, which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to

or registered assigns the principal sum specified above, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, on the Maturity date specified above and to pay interest thereon, in such coin or currency, from and including the Original Issue Date (or if this Global Note has two or more Original Issue Dates, interest shall, beginning on each such Original Issue Date, begin to accrue for that part of the principal amount to which such Original Issue Date is applicable) specified above, or from and including the most recent Interest Payment Date specified above to which interest has been paid or duly provided for, as the case may be. Interest shall be paid in arrears [quarterly] on each Interest Payment Date in each year commencing on (a) the first such Interest Payment Date next succeeding the earliest Original Issue Date or Original Issue Dates, or (b) if such Original Issue Date is after a Record Date and prior to the first Interest Payment Date, on the second Interest Payment Date, at the per annum Interest Rate set forth above until Maturity and the principal hereof is paid or made available for payment. The interest so payable and punctually paid or duly provided for on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note is registered at the close of business on the Record Date specified above next preceding such Interest Payment Date; provided, however, that if an Original Issue Date falls between a Record Date and the next Interest Payment Date, the first payment of interest with respect to such Original Issue Date will be paid on the second Interest Payment Date subsequent to such Original Issue Date to the Person in whose name this Note is registered at the close of

business on the Record Date for such second Interest Payment Date; and provided, further, that interest payable on the Maturity date or, if applicable, upon redemption, shall be payable to the Person to whom principal shall be payable. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and shall be paid to the Person in whose name this Note is registered at the close of business on a Record Date for the payment of such defaulted interest to be fixed by the Company, notice whereof shall be given to Noteholders not less than fifteen days prior to such Record Date. Payment of the principal of and any premium and interest on this Note shall be made on or before 10:30 A.M., New York City time or such other time (if this Note is a Global Note at such time) as shall be agreed upon between the Trustee and the Depository, of the day on which such payment is due, by wire transfer into the account specified by the Depository; provided, however, that as a condition to the payment at the Maturity date of any part of the principal and any applicable premium of this Global Note, the Depository shall surrender, or cause to be surrendered, this Global Note to the Trustee; provided further, however, if this Note is not a Global Note at such time, as such of the foregoing is provided for in the Indenture referred to below. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer, but not any tax, assessment or governmental charge imposed on the Holder of this Note.

Under certain circumstances, this Global Note is exchangeable in whole or from time to time in part for a definitive individual Note or Notes, with the same Original Issue Date or Original Issue Dates, Maturity date, Interest Rate and redemption and other provisions as provided herein or in the Indenture.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS GLOBAL NOTE SET FORTH IN FULL ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH IN FULL AT THIS PLACE.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof, directly or through an Authenticating Agent, by manual signature of an authorized signatory, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: _____

Matrix Service Company

By: _____
Name:
Title: President

By: _____
Name:
Title: Secretary

TRUSTEE'S CERTIFICATE
OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

[TRUSTEE], as Trustee

By: _____
Authorized Signatory

MATRIX SERVICE COMPANY
SERIES _____ NOTES

Until such time as this Note is exchanged in whole or in part for definitive individual notes as herein and in the Indenture so provided, this Global Note is one of, and a global security which represents Notes which are part of, the duly authorized Notes of the Company (herein called the "Notes"), issued and to be issued under a Senior Note Indenture dated as of [____], 2004 (herein called the "Indenture") between the Company and [Trustee], as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Noteholders, and of the terms upon which the Notes are, and are to be, authenticated and delivered.

Each Note shall be dated the date of its authentication by the Trustee. Each Note shall also bear an Original Issue Date or Original Issue Dates which with respect to this Global Note (or any portion thereof) shall mean the date or dates of the original issue of the Notes represented hereby as specified on the face hereof, and such Original Issue Date or Original Issue Dates shall remain the same for all Notes subsequently issued upon transfer, exchange or substitution of such original Note (or such subsequently issued Notes) regardless of their dates of authentication. The Notes may bear different dates, mature at different times, bear interest at different rates, be subject to different redemption provisions, if any, and may otherwise vary, all as provided in the Indenture.

Interest on this Note will be payable on the Interest Payment Date or Interest Payment Dates as specified on the face hereof and, in either case, at Maturity. Unless otherwise specified on the face hereof, payments on this Note with respect to any particular Interest Payment Date or the Maturity date will include interest accrued from and including the applicable Original Issue Date, or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for, to but excluding the particular Interest Payment Date or the Maturity date. Interest on this Note will be computed and paid on the basis of a 360-day year of twelve 30-day months.

Unless otherwise specified on the face hereof, if this Note is an Amortizing Note, payments with respect to this Note will be applied first to interest due and payable hereon and then to the reduction of the unpaid principal amount hereof. If this Note is an Amortizing Note, a table setting forth the schedule of dates and amounts of payments of principal of and interest on this Note or the formula for the amortization of principal and/or interest is set forth in an annex attached to this Note.

If any premium is payable on this Note as specified on the face of this Note in the event of any prepayments of principal, a table setting forth the terms of such premium shall be set forth on a schedule attached to this Note.

All percentages resulting from any calculation with respect to this Note will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from any such calculation with respect to this Note will be rounded to the nearest cent (with one-half cent being rounded upward).

Exhibit A-4

"Business Day" means, unless otherwise specified on the face hereof, any Monday, Tuesday, Wednesday, Thursday or Friday that in the City of New York is not a day on which banking institutions are authorized or obligated by law, regulation or executive order to close. If an Interest Payment Date or Maturity for this Note falls on a day that is not a Business Day, payment of principal, premium, if any, and interest to be made on such day with respect to this Note will be made on the next day that is a Business Day with the same force and effect as if made on the due date, and no additional interest will be payable on the date of payment for the period from and after the due date as a result of such delayed payment.

This Note will be redeemable at the option of the Company prior to its Stated Maturity only if an Initial Redemption Date is specified on the face hereof. If so specified, this Note will be subject to redemption at the option

of the Company on any date on and after such Initial Redemption Date in whole or from time to time in part in increments of \$1,000 or integral multiples thereof, at the redemption prices specified in an annex attached to this Note, plus accrued and unpaid interest to but excluding the date of redemption, but payments due with respect to this Note prior to the date of redemption will be payable to the Holder of this Note of record at the close of business on the relevant Record Date specified on the face hereof, all as provided in the Indenture. The Company may exercise such option by causing the Trustee to mail a notice of such redemption, at least 30 but not more than 60 calendar days prior to the date of redemption, in accordance with the provisions of the Indenture. In the event of redemption of this Note in part only, this Note will be cancelled and a new Note or Notes representing the unredeemed portion hereof will be issued in the name of the Holder hereof. This Note is not subject to a sinking fund unless otherwise specified in an annex attached hereto.

If so specified on the face of this Note, (i) this Note shall be subject to repayment, in whole or in part, prior to Stated Maturity at the option of the Holder on a certain date or dates and at a certain price or prices, plus accrued and unpaid interest to but excluding the date of payment; and (ii) the Stated Maturity of this Note may be extended at the option of the Company for one or more Extension Periods, as specified on the face hereof, up to but not beyond the Final Maturity Date specified on the face hereof, in each case in accordance with the provisions of the Indenture applicable thereto or any indenture supplemental thereto and/or as specified in an annex attached to this Note.

Notwithstanding anything herein to the contrary, if this Note is an Original Issue Discount Note as specified on the face hereof, the amount payable in the event the principal amount hereof is declared to be due and payable immediately by reason of an Event of Default or in the event of redemption or repayment hereof prior to the Stated Maturity hereof, in lieu of the principal amount due at the Stated Maturity hereof, shall be the Amortized Face Amount of this Note as of the date of declaration, redemption or repayment, as the case may be. The "Amortized Face Amount" of this Note shall be the amount equal to (a) the principal amount of this Note multiplied by the Issue Price specified on the face hereof plus (b) the portion of the difference between the dollar amount thus obtained and the principal amount hereof that has accreted at the Yield to Maturity specified on the face hereof (computed in accordance with generally accepted United States bond yield computation principles) to such date of declaration, redemption, or repayment but in no event shall the Amortized Face Amount of this Note exceed the principal amount stated on the face hereof.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Noteholders to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding that would be affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain covenants in the Indenture. The Indenture also provides that the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding may waive certain past defaults and their consequences on behalf of the Holders of all Notes. Any such consent or waiver by the Holder of this Global Note (if not timely revoked in accordance with the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders of this Global Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Global Note or such Note.

As set forth in, and subject to, the provisions of the Indenture, no Holder of any Notes will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have previously given to the Trustee written notice of a continuing default with respect to the Notes, the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as Trustee, and the Trustee shall have failed to institute such proceeding within 60 days; provided, however, that such limitations do not apply to a suit instituted by the Holder hereof for the enforcement of payment of the principal of and any premium or interest on this Global Note on or after the respective due dates expressed herein.

If this Note is a Global Note it shall bear the following legend:

THIS NOTE IS A GLOBAL NOTE REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE THEREOF AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL NOTES REPRESENTED HEREBY, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

If at any time the Depositary for this Global Note notifies the Company that it is unwilling or unable to continue as Depositary for this Global Note or if at any time the Depositary for this Global Note shall no longer be registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or any successor statute or regulation, the Company may appoint a successor Depositary with respect to this Global Note. If (A) a successor Depositary for this Global Note is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, or (B) any Notes are represented by this Global Note at a time when an Event of Default with respect to the Notes shall have occurred and be continuing, then in each case the Company's election to issue this Note in global form shall no longer be effective with respect to this Global Note and the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Notes in exchange for this Global Note, shall authenticate and make available for delivery, individual Notes of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of this Global Note in exchange for this Global Note.

If agreed by the Company and the Depositary with respect to Notes issued in the form of this Global Note, the Depositary for such Global Note shall surrender this Global Note in exchange in whole or in part for individual Notes of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee shall authenticate and make available for delivery, without a service charge, (1) to each Person specified by such Depositary, a new Note or Notes of like tenor and terms, and of any authorized denominations as requested by such Person in aggregate principal amount equal to and in exchange for the beneficial interest of such Person in this Global Note, and (2) to such Depositary a new Global Note of like tenor and terms and in a denomination equal to the difference, if any, between the principal amount of this Global Note and the aggregate principal amount of Notes delivered to Holders thereof.

No reference herein to the Indenture and no provision of this Global Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Global Note at the times, places and rates, and in the coin or currency, herein prescribed.

The Indenture contains provisions for the satisfaction and discharge of the Indenture upon compliance by the Company with certain conditions specified therein, which provisions apply to this Note.

Prior to due presentment of this Global Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Global Note is registered as the owner hereof for all purposes, whether or not this Global Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Indenture and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

All terms used in the Note which are defined in the Indenture but are not defined in this Note shall have the meanings assigned to them in the Indenture.

OPTION TO ELECT REPAYMENT

(To be completed only if this Note is repayable at the option of the Holder and the Holder elects to exercise such rights)

The undersigned owner of this Note hereby irrevocably elects to have the Company repay the principal amount of this Note or portion hereof below designated at the applicable optional repayment price indicated on an annex attached hereto plus accrued and unpaid interest to but excluding the date of repayment, if this election is being made pursuant to the option referred to under "Option to Elect Repayment" on the face hereof. If a portion of this Note is not being repaid, specify the principal amount to be repaid and the denomination or denominations (which will be \$1,000 or an integral multiple thereof) of the Note or Notes to be issued to the Holder for the portion of this Note not being repaid (in the absence of any specification, one such Note will be issued for the portion not being repaid):

Dated: _____

Principal amount to be repaid if amount to be repaid and is less than the entire principal amount of this Note (principal amount remaining must be an authorized denomination)

\$ _____
(Which must be an integral multiple of \$1,000)

Signature
Sign exactly as name appears on the front of this Note

Indicate address where check is to be sent:

Social Security Or Other Taxpayer ID Number:

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

UNIT GIFT MIN ACT

Custodian
(Cust) (Minor)
Under Uniform Gifts to Minors Act

TEN ENT - as tenants by the entities

JT TEN - as joint tenants with right of survivorship and not as tenants in common

State

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sell(s)
assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF ASSIGNEE

Please print or typewrite name and address including postal zip code of assignee

_____ the within note and all rights thereunder, hereby
irrevocably constituting and appointing _____ attorney to transfer said note on the books of the Company, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature(s) to this assignment must correspond with the name(s) as written upon the face of the within instrument in every particular, without alteration or enlargement or any change whatever. The signature(s) must be guaranteed by an "eligible guarantor institution" that is a member or participant in the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Program.

MATRIX SERVICE COMPANY

AND

AS TRUSTEE

SUBORDINATED NOTE INDENTURE

Dated as of _____, 2004

CROSS-REFERENCE TABLE

Section of Trust Indenture Act of 1939, as amended	Section of Indenture
310(a)	7.09
310(b)	7.08
	7.10
310(c)	Inapplicable
311(a)	7.13
311(b)	7.13
311 (c)	Inapplicable
312(a)	5.01
	5.02(a)
312(b)	5.02(c)
	5.02(d)
312(c)	5.02(e)
313(a)	5.04(a)
313(b)	5.04(a)
313(c)	5.04(a)
313(d)	5.04(b)
314(a)	5.03
314(b)	Inapplicable
314(c)	13.06(a)
314(d)	Inapplicable
314(e)	13.06(b)
314(f)	Inapplicable
315(a)	7.01(b)
	7.02
315(b)	6.07
315(c)	7.01(a)
315(d)	7.01(b)
315(e)	6.08
316(a)	6.06
	8.04
316(b)	6.04
316(c)	8.01
317(a)	6.02
317(b)	4.03
318(a)	13.08

TABLE OF CONTENTS

ARTICLE ONE
DEFINITIONS

Section 1.01	2
--------------	---

ARTICLE TWO
ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01	7
Section 2.02	9
Section 2.03	9
Section 2.04	11
Section 2.05	12
Section 2.06	13
Section 2.07	13
Section 2.08	14
Section 2.09	15
Section 2.10	15
Section 2.11	15
Section 2.12	17
Section 2.13	17

ARTICLE THREE
REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

Section 3.01	17
Section 3.02	18
Section 3.03	19
Section 3.04	19
Section 3.05	20
Section 3.06	20

ARTICLE FOUR
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01	20
Section 4.02	20
Section 4.03	21
Section 4.04	22
Section 4.05	22
Section 4.06	22

ARTICLE FIVE
SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01	22
Section 5.02	22
Section 5.03	24

ARTICLE SIX
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

Section 6.01	25
Section 6.02	27
Section 6.03	28
Section 6.04	29
Section 6.05	29
Section 6.06	30
Section 6.07	30
Section 6.08	31

ARTICLE SEVEN
CONCERNING THE TRUSTEE

Section 7.01	31
Section 7.02	32
Section 7.03	34
Section 7.04	34
Section 7.05	34
Section 7.06	34
Section 7.07	35
Section 7.08	35
Section 7.09	35
Section 7.10	36
Section 7.11	37
Section 7.12	38
Section 7.13	39

ARTICLE EIGHT
CONCERNING THE SECURITYHOLDERS

Section 8.01	39
Section 8.02	39
Section 8.03	40
Section 8.04	40
Section 8.05	40

ARTICLE NINE
SUPPLEMENTAL INDENTURES

Section 9.01	41
Section 9.02	44
Section 9.03	44
Section 9.04	44
Section 9.05	44

ARTICLE TEN
CONSOLIDATION, MERGER AND SALE

Section 10.01	45
Section 10.02	45
Section 10.03	45

ARTICLE ELEVEN
SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONIES

Section 11.01	46
Section 11.02	48
Section 11.03	48
Section 11.04	48

ARTICLE TWELVE
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01	48
---------------	----

ARTICLE THIRTEEN
MISCELLANEOUS PROVISIONS

Section 13.01	49
Section 13.02	49
Section 13.03	49
Section 13.04	49
Section 13.05	49
Section 13.06	49
Section 13.07	50
Section 13.08	50
Section 13.09	50
Section 13.10	50
Section 13.11	50
Section 13.12	50
Section 13.13	50

ARTICLE FOURTEEN
SUBORDINATION OF DEBENTURES

Section 14.01	51
Section 14.02	51
Section 14.03	52
Section 14.04	53
Section 14.05	54
Section 14.06	54
Section 14.07	54
Section 14.08	55
Section 14.09	55
Section 14.10	55

THIS INDENTURE, dated as of the ____ day of _____, 2004 between Matrix Service Company, a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and _____, a _____ banking corporation, as trustee (the "Trustee"):

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of unsecured notes or other evidences of indebtedness (hereinafter referred to as the "Securities"), in an unlimited aggregate principal amount to be issued from time to time in one or more series as in this Indenture provided, as registered Securities without coupons, to be manually authenticated by the certificate of the Trustee, and which will rank pari passu with all other unsecured debt of the Company that; by its terms, is not subordinated to indebtedness issued pursuant to this Indenture;

WHEREAS, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture;

WHEREAS, the Securities and the certificate of authentication to be borne by the Securities (the "Certificate of Authentication") are to be substantially in such forms as may be approved by a Company Order (as defined below), or set forth in this Indenture or in any indenture supplemental to this Indenture; and

WHEREAS, all acts and things necessary to make the Securities issued pursuant hereto, when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid indenture and agreement according to its terms, have been done and performed or will be done and performed prior to the issuance of such Securities, and the execution of this Indenture has been and the issuance hereunder of the Securities has been or will be prior to issuance in all respects duly authorized, and the Company, in the exercise of the legal right and power in it vested, executes this Indenture and proposes to make, execute, issue and deliver the Securities;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Securities are and are to be authenticated, issued and delivered, and in consideration of the premises, of the purchase and acceptance of the Securities by the holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit (subject to the provisions of this Indenture) of the respective holders from time to time of the Securities, without any discrimination, preference or priority of any one Security over any other by reason of priority in the time of issue, sale or negotiation thereof, or otherwise, except as provided herein, as follows:

ARTICLE ONE

DEFINITIONS

Section 1.01. The terms defined in this Section (except as in this Indenture otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939, as amended, or which are by reference in such Act defined in the Securities Act of 1933, as amended (except as herein otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this instrument.

“Affiliate” shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities (other than securities having such voting rights only by reason of the occurrence of a contingency which has not occurred), by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. The Trustee may request and may conclusively rely upon an Officers’ Certificate to determine whether any Person is an Affiliate of any specified Person.

“Authenticating Agent” shall mean an authenticating agent with respect to all or any of the series of Securities, as the case may be, appointed with respect to all or any series of the Securities, as the case may be, by the Trustee pursuant to Section 2.10.

“Authorized Officer” shall mean the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer or any other officer or agent of the Company duly authorized by the Board of Directors to act in respect of matters relating to this Indenture.

“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 copy of a resolution certified by the Secretary or an Assistant or Attesting Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“Business Day”, with respect to any Security, shall mean any day that (a) in the Place of Payment (or in any of the Places of Payment, if more than one) in which amounts are payable as specified in the form of such Security and (b) in the city in which the Trustee administers its corporate trust business, is not a day on which banking institutions are authorized or required by law or regulation to close.

“Certificate” shall mean a certificate signed by an Authorized Officer. The Certificate need not comply with the provisions of Section 13.06.

“Commission” shall mean the Securities and Exchange Commission, as from time to time constituted and created under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) or if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body, if any, performing such duties on such date.

“Company Order” shall mean a written order signed in the name of the Company by an Authorized Officer and the Secretary or an Assistant or Attesting Secretary of the Company, pursuant to a Board Resolution establishing a series of Securities.

“Corporate Trust Office” shall mean the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of the execution of this Indenture is located _____, New York, NY _____, Attention: Corporate Trust Administration.

“Debt” means, with respect to any Person at any date of determination (without duplication), (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses, (iii) all obligations of such Person in respect of letters of credit or bankers’ acceptances or other similar instruments (or reimbursement obligations thereto) issued on the account of such person, (iv) all obligations of such person to pay the deferred purchase price of property or services, except Trade Payables, (v) all obligations of such Person as lessee under leases which are, or which are required to be, classified on the balance sheet of such Person as a “capitalized lease” in accordance with GAAP, (vi) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person; provided that, for purposes of determining the amount of any Debt of the type described in this clause (vi), if recourse with respect to such Debt is limited to such asset, the amount of such Debt shall be limited to the lesser of the fair market value of such asset or the amount of such Debt, (vii) all Debt of others to the extent such Debt is Guaranteed by such Person, and (viii) to the extent not otherwise included in this definition, all obligations of such Person for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity prices, forward contracts, options, swaps, collars and similar arrangements.

“Default” shall mean any event, act or condition which with notice or passage of time, or both, would constitute an Event of Default.

“Depository” shall mean, with respect to Securities of any series, for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.01 or 2.11.

“Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01(b).

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

“Eligible Obligations” means (a) with respect to Securities denominated in Dollars, Governmental Obligations; or (b) with respect to Securities denominated in a currency other than Dollars or in a composite currency, such other obligations or instruments as shall be specified with respect to such Securities, as contemplated by Section 2.01.

“Event of Default” with respect to Securities of a particular series shall mean any event specified in Section 6.01, continued for the period of time, if any, therein designated.

“Exchange Act” shall mean as such term is defined in the definition of the term “Commission.”

“Global Security” shall mean, with respect to any series of Securities, a Security executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“Governmental Authority” means the government of the United States or of any State or Territory thereof or of the District of Columbia or of any county, municipality or other political subdivision of any of the foregoing, or any department, agency, authority or other instrumentality of any of the foregoing.

“Governmental Obligations” shall mean securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, 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 of 1933, as amended) as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental 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 such custodian in respect of the Governmental Obligation or the specific payment of principal of or interest on the Governmental Obligation evidenced by such depository receipt.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for purposes of assuring in any other manner the obligee of such Debt of other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in

whole or in part); provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Instructions” shall mean instructions acceptable to the Trustee issued pursuant to a Company Order in connection with a Periodic Offering and signed by an Authorized Officer. Instructions need not comply with the provisions of Section 13.06.

“Interest” when used with respect to non-interest bearing Securities shall mean interest payable after maturity (whether at stated maturity, upon acceleration or redemption or otherwise) or after the date, if any, on which the Company becomes obligated to acquire a Security, whether by purchase or otherwise.

“Interest Payment Date” when used with respect to any installment of interest on a Security of a particular series shall mean the date specified in such Security or in a Board Resolution, Company Order or an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

“Lien” means, with respect to any property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property. For purposes of this Indenture, the Company shall be deemed to own subject to a Lien any property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property.

“Officers’ Certificate” shall mean a certificate signed by an Authorized Officer and by the Secretary or Assistant Secretary of the Company. Each such certificate shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel for the Company. Each such opinion shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

“Outstanding” shall mean when used with reference to Securities of any series and, subject to the provisions of Section 8.04, all Securities of that series theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Securities theretofore canceled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for cancellation; (b) Securities or portions thereof for the payment or redemption of which monies or Eligible Obligations 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 in trust by the Company (if the Company shall act as its own paying agent); provided, however, that if such Securities or portions of such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article Three provided, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Securities paid pursuant to Section 2.07 or in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07. The principal amount of a

Discount Security that shall be deemed to be Outstanding for purposes of this Indenture shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof.

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

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or any Governmental Authority.

“Place of Payment” shall mean the place or places where the principal of and interest, if any, on the Securities of any series are payable as specified in accordance with Section 2.01.

“Predecessor Security” shall mean, with respect to a for any particular Security every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.07 in lieu of a lost, mutilated, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, mutilated, destroyed or stolen Security.

“Required Currency” shall mean as such term is defined in Section 2.12

“Responsible Officer” when used with respect to the Trustee, means any vice president, any assistant vice president, any senior trust officer or assistant trust officer, any trust officer, or any other officer associated with the corporate trust department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred by the Trustee because of such person’s knowledge of and familiarity with the particular subject.

“Security” or “Securities” shall mean any Security or Securities, as the case may be, authenticated and delivered under this Indenture.

“Securityholder”, “holder”, “holder of Securities” or “registered holder” shall mean the person or persons in whose name or names a particular Security shall be registered on the books of the Company kept for that purpose in accordance with the terms of this Indenture.

“Security Registrar” shall mean as such term is defined in Section 2.02(b).

“Senior Debt” shall mean the principal of (and premium, if any) and interest on all Debt of the Company whether created, incurred or assumed before, on or after the date of this Indenture; provided that such Senior Debt shall not include (i) Debt of the Company that, when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse, and (ii) any other Debt of the Company which by the terms of the instrument creating or evidencing the same is specifically designated as being subordinated to or *pari passu*

with the Securities, and in particular the Securities shall rank *pari passu* with all other debt securities and guarantees issued to any trust, partnership or other entity affiliated with the Company which is a financing vehicle of the Company in connection with an issuance of securities by such financing vehicle.

“Series” means a series of Securities or the Securities of a series established pursuant to this Indenture and includes, if the context so requires, each Tranche thereof.

“Trade Payables” means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services.

“Tranche” means Securities which (a) are of the same series and (b) have identical terms except as to principal amount and/or date of issuance.

“Trustee” shall mean _____, and, subject to the provisions of Article Seven, shall also include its successors and assigns, and, if at any time there is more than one person acting in such capacity hereunder, “Trustee” shall mean each such person. The term “Trustee” as used with respect to a particular series of the Securities shall mean the trustee with respect to that series.

“Trust Indenture Act” shall mean, subject to the provisions of Sections 9.01, 9.02, and 10.01 the Trust Indenture Act of 1939, as amended and in effect at the date of execution of this Indenture.

“United States” means the United States of America, its territories, its possessions and other areas subject to its political jurisdiction.

ARTICLE TWO

ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued from time to time in one or more series and in one or more Tranches of such series and, unless otherwise provided in the Company Order or supplemental indenture establishing such series, each series may be re-opened for issuances of additional Securities of that series. Each series shall be authorized by a Company Order or Orders or one or more indentures supplemental hereto, which shall specify whether the Securities of such series shall be subject to a Periodic Offering. The Company Order or Orders or supplemental indenture and, in the case of a Periodic Offering, Instructions or other procedures acceptable to the Trustee specified in such Company Order or Orders, shall establish the terms of the series, which may include the following: (i) any limitations on the aggregate principal amount of the Securities to be authenticated and delivered under this Indenture as part of such series (except for Securities authenticated and delivered upon registration of transfer of, in

exchange for or in lieu of other Securities of that series); (ii) the stated maturity or maturities of such series and any right to extend such date or dates; (iii) the date or dates from which interest shall accrue, the Interest Payment Dates on which such interest will be payable or the manner of determination of such Interest Payment Dates and the record date for the determination of holders to whom interest is payable on any such Interest Payment Date; (iv) the interest rate or rates (which may be fixed or variable), or method of calculation of such rate or rates, for such series; (v) the terms, if any, regarding the redemption, purchase or repayment of such series (whether at the option of the Company or a holder of the Securities of such series and whether pursuant to a sinking fund or analogous provisions, including payments made in cash in anticipation of future sinking fund obligations), including redemption, purchase or repayment date or dates of such series, if any, and the price or prices and other terms and conditions applicable to such redemption, purchase or repayment (including any premium); (vi) whether or not the Securities of such series shall be issued in whole or in part in the form of a Global Security and, if so, the Depositary for such Global Security and the related procedures with respect to transfer and exchange of such Global Security; (vii) the designation of such series; (viii) the form of the Securities of such series; (ix) the maximum annual interest rate, if any, of the Securities permitted for such series; (x) whether or not any Events of Default or covenants in addition to or in lieu of those set forth in this Indenture shall apply; (xi) the currency or currencies, including composite currencies, in which payment of the principal of (and premium, if any) and interest on the Securities of such series shall be payable, if other than Dollars and the manner of determining the Dollar equivalent for purposes of determining Securities Outstanding; (xii) any other information necessary to complete the Securities of such series; (xiii) the establishment of any office or agency pursuant to Section 4.02 hereof and any other place or places which the principal of and interest, if any, on Securities of that series shall be payable; (xiv) if other than denominations of \$1,000 or any integral multiple thereof, the denominations in which the Securities of the series shall be issuable; (xv) the obligations or instruments, if any, which shall be considered to be Eligible Obligations in respect of the Securities of such series denominated in a currency other than Dollars or in a composite currency; (xvi) whether or not the Securities of such series shall be issued as Discount Securities and the terms thereof, including the portion of the principal amount thereof which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01(b); (xvii) if the principal, premium, if any, or interest, if any, on such Securities are to be payable, at the election of the Company or the holder thereof, in coin or currency, including composite currencies, other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election shall be made; (xviii) if the amount of payment of principal of and premium, if any, or interest, if any, on such Securities may be determined with reference to an index, formula or other method, or based on a coin or currency other than that in which the Securities are stated to be payable, the manner in which such amount shall be determined; (xix) the date or dates, if any, after which the Securities may be converted or exchanged into or for shares of the Company's common stock or another Person's securities or properties and the terms for any such conversion or exchange; (xx) whether the Securities will be subject to Article 11; (xxi) any special provisions for the payment of additional amounts; (xxii) any right to defer payments of interest by extending an interest payment period and the duration of such extension; and (xxiii) any other terms of such series not inconsistent with this Indenture.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to any such Company Order or in any indentures supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Company Order, a copy of an appropriate record of the applicable Board Resolution shall be certified by the Secretary or an Assistant or Attesting Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order setting forth the terms of that series.

Section 2.02. The Securities of any series shall be in substantially of the form (i) as set forth in one or more indentures supplemental hereto or as provided in a Company Order, or (ii) with respect to any Tranche of Securities of a series subject to Periodic Offering, to the extent permitted by any of the documents referred to in clause (i) above, in Instructions, or by other procedures acceptable to the Trustee specified in such Company Order or Orders, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation 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 or appropriate 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 Securities of that series may be listed or of the Depository, or to conform to general usage or as may, consistent herewith, be determined by the Authorized Officers executing the same as evidenced by their execution of the Securities.

The Trustee's Certificate of Authentication shall be in substantially the following form:

This is one of the Securities of the series designated in accordance with, and referred to in, the within-mentioned Indenture.

Dated:

_____, as Trustee

By: _____
Authorized Signatory

Section 2.03. The Securities shall be issuable as registered Securities and in the denominations of \$1,000 or any integral multiple thereof, subject to Sections 2.01(xi) and (xiv). The Securities of a particular series shall bear interest payable on the dates and at the rate or rates specified with respect to that series. Except as otherwise specified as contemplated by Section 2.01, the principal of and the interest on the Securities of any series, as well as any premium thereon in case of redemption thereof prior to maturity, shall be payable in Dollars at the office or agency of the Company maintained for that purpose. Each Security shall be dated the date of its authentication.

The interest installment on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Securities of that series shall be paid to the person in whose name said Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment, except that interest payable on redemption or maturity shall be payable as set forth in the Company Order or indenture supplemental hereto establishing the terms of such series of Securities. Except as otherwise specified as contemplated by Section 2.01, interest on Securities will be computed on the basis of a 360-day year of twelve 30-day months.

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Securities of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Securities to the persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefore to be mailed, first class postage prepaid, to each Securityholder at his or her address as it appears in the Security Register (as hereinafter defined), not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefore having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names such Securities (or their respective Predecessor Securities) are registered on such special record date and shall be no longer payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on any Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the

Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Unless otherwise set forth in a Company Order or one or more indentures supplemental hereto establishing the terms of any series of Securities pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Securities with respect to any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the last day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

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

Section 2.04. The Securities shall, subject to the provisions of Section 2.06, be printed on steel engraved borders or fully or partially engraved, or legibly typed, as the proper officer of the Company may determine, and shall be signed on behalf of the Company by an Authorized Officer. The signature of such Authorized Officer upon the Securities may be in the form of a facsimile signature of a present or any future Authorized Officer and may be imprinted or otherwise reproduced on the Securities and for that purpose the Company may use the facsimile signature of any person who shall have been an Authorized Officer, notwithstanding the fact that at the time the Securities shall be authenticated and delivered or disposed of such person shall have ceased to be an Authorized Officer.

Only such Securities as shall bear thereon a Certificate of Authentication substantially in the form established for such Securities, executed manually by an authorized signatory of the Trustee, or by any Authenticating Agent with respect to such Securities, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate executed by the Trustee, or by any Authenticating Agent appointed by the Trustee with respect to such Securities, upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the registered holder thereof is entitled to the benefits of this Indenture.

The form Note issuable pursuant to this Indenture is attached hereto as Exhibit A, as the same may be amended by, and to reflect the terms contained in, the Company Order and the indenture supplemental hereto establishing the series of any Securities issuable pursuant to this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of

such Securities and the Trustee, in accordance with such Company Order, shall authenticate and deliver such Securities; provided, however, that in the case of Securities offered in a Periodic Offering, the Trustee shall authenticate and deliver such Securities from time to time in accordance with Instructions or such other procedures acceptable to the Trustee as may be specified by or pursuant to a supplemental indenture or Company Order delivered to the Trustee prior to the time of the first authentication of Securities of such series.

In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall receive and (subject to Section 7.01) shall be fully protected in relying upon, (i) an Opinion of Counsel and (ii) an Officers' Certificate, each stating that the form and terms thereof have been established in conformity with the provisions of this Indenture. With respect to Securities of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Company Order, Opinion of Counsel, Officers' Certificate and other documents delivered pursuant to this Section at or prior to the time of the first authentication of Securities of such series unless and until such Company Order, Opinion of Counsel, Officers' Certificate or other documents have been superseded or revoked or expire by their terms.

Each Opinion of Counsel and Officers' Certificate delivered pursuant to this Section 2.04 shall include all statements prescribed in Section 13.06(b). Such Opinion of Counsel shall also be to the effect that when such Securities have been executed by the Company and authenticated by the Trustee in accordance with the provisions of this Indenture and delivered to and duly paid for by the purchasers thereof, they will be valid and legally binding obligations of the Company, enforceable in accordance with their terms (subject to customary exceptions) and will be entitled to the benefits of this Indenture.

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

Section 2.05. (a) Securities of any series may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose, for other Securities of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section. In respect of any Securities so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefore the Security or Securities of the same series which the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously Outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose in the Borough of Manhattan, the City and State of New York, or such other location designated by the Company a register or registers (herein referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities and the transfers of Securities as in this Article provided

and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Securities and transfer of Securities as herein provided shall be appointed as authorized by a Board Resolution, an indenture supplement hereto or Company Order (the "Security Registrar").

Upon surrender for transfer of any Security at the office or agency of the Company designated for such purpose in the Borough of Manhattan, the City and State of New York, or other location as aforesaid, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Security or Securities of the same series as the Security presented for a like aggregate principal amount.

All Securities presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Security Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Security Registrar, duly executed by the registered holder or by his duly authorized attorney in writing.

(c) Except as provided in the first paragraph of Section 2.07, no service charge shall be made for any exchange or registration of transfer of Securities, or issue of new Securities in case of partial redemption of any series, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.06, Section 3.03(b) and Section 9.04 not involving any transfer.

(d) The Company shall neither be required (i) to issue, exchange or register the transfer of any Securities during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the Outstanding Securities of the same series and ending at the close of business on the day of such mailing, nor (ii) to register the transfer of or exchange any Securities of any series or portions thereof called for redemption or as to which the holder thereof has exercised its right, if any, to require the Company to repurchase such Security in whole or in part, except that portion of such Security not required to be repurchased.

(e) The provisions of this Section 2.05 are, with respect to any Global Security, subject to Section 2.11 hereof.

Section 2.06. Pending the preparation of definitive Securities of any series, the Company may execute, and the Trustee shall authenticate and deliver, temporary Securities (printed, lithographed or typewritten) of any authorized denomination, and substantially in the form of the definitive Securities in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every temporary Security of any series 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 of such series in accordance with Section 2.04.

If temporary Securities of a series are issued, the Company will cause definitive Securities of such series to be prepared without delay. After the preparation of such definitive

Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series without charge to the holders thereof (except as provided in Section 2.07), at the office or agency of the Company designated for the purpose, and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series, unless the Company advises the Trustee to the effect that definitive Securities need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder.

Section 2.07. In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon its request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Security of the same series bearing a number not contemporaneously Outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Security and of the ownership thereof. The Trustee may authenticate any such substituted Security and deliver the same upon the written request or authorization of any Authorized Officer of the Company. Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every Security issued pursuant to the provisions of this Section in substitution for any Security which is mutilated, destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.08. All Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer, or for credit against a sinking fund, shall, if surrendered to

the Company or any paying agent, be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be canceled by it, and no Securities shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company, the Trustee shall deliver to the Company canceled Securities held by the Trustee. In the absence of such request the Trustee may dispose of canceled Securities in accordance with its standard procedures. If the Company shall otherwise acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.09. Nothing in this Indenture or in the Securities, express or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and the holders of the Securities, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Securities.

Section 2.10. So long as any of the Securities of any series remain Outstanding there may be an Authenticating Agent for any or all such series of Securities which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, transfer or partial redemption thereof, 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. All references in this Indenture to the authentication of Securities by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series except for authentication upon original issuance or pursuant to Section 2.07 hereof. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation which has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and which is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by Federal or State authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions it shall resign immediately.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto. The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

Section 2.11. (a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global

Security which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be authenticated and delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

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

(c) If at any time the Depository for a series of Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, this Section 2.11 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.05, the Trustee will authenticate and deliver Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Company may at any time in its discretion determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.11 shall no longer apply to the Securities of such series. In such event the Company will execute, and subject to Section 2.05, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be canceled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Security Registrar. The Trustee shall deliver such Securities to the Depository for delivery to the persons in whose names such Securities are so registered.

(d) Payments in respect of the principal of and interest on any series of Securities registered in the name of the Depository or its nominee will be payable to the Depository or such nominee in its capacity as the registered owner of such Global Security. The Company and the Trustee may treat the Person in whose name such series of Securities, including the Global Security, are registered as the owner thereof for the purpose of receiving such payments and for any and all other purposes whatsoever. None of the Company, the Trustee, any Security Registrar, the paying agent or any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments

made on account of the beneficial ownership interests of the Global Security by the Depositary or its nominee or any of the Depositary's direct or indirect participants, or for maintaining, supervising or reviewing any records of the Depositary, its nominee or any of its direct or indirect participants relating to the beneficial ownership interests of the Global Security, the payments to the beneficial owners of the Global Security of amounts paid to the Depositary or its nominee, or any other matter relating to the actions and practices of the Depositary, its nominee or any of its direct or indirect participants. None of the Company, the Trustee or any such agent will be liable for any delay by the Depositary, its nominee, or any of its direct or indirect participants in identifying the beneficial owners of any series of Securities evidenced by a Global Security, and the Company and the Trustee may conclusively rely on, and will be protected in relying on, instructions from the Depositary or its nominee for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the series of Securities to be issued).

Section 2.12. In the case of the Securities of any series denominated in any currency other than Dollars or in a composite currency (the "Required Currency"), except as otherwise specified with respect to such Securities as contemplated by Section 2.01, the obligation of the Company to make any payment of the principal thereof, or the premium or interest thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including, without limitation, the risks of delay and exchange rate fluctuation, shall be borne by the Company, the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefore except in the case of its negligence or willful misconduct.

Section 2.13. The Company in issuing Securities may use "CUSIP" numbers (if then generally in use) and, if so used, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to holders of Securities; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

ARTICLE THREE

REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

Section 3.01. The Company shall not be required to redeem the Securities of any series issued hereunder except as may otherwise be set forth in the Company Order or Orders or indenture supplemental hereto as provided in Section 2.01.

Section 3.02. (a) In case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Securities of any series in accordance with the right reserved so to do, it shall give notice of such redemption to holders of the Securities of such series to be redeemed by mailing, first class postage prepaid, a notice of such redemption not less than 30 days and not more than 60 days before the date fixed for redemption of that series to such holders at their last addresses as they shall appear upon the Security Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder receives the notice. In any case, failure duly to give such notice to the holder of any Security of any series designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Securities of such series or any other series. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption or subject to compliance with certain conditions provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with any such restriction or condition.

Unless otherwise so provided as to a particular series of Securities, if at the time of mailing of any notice of redemption the Company shall not have deposited with the paying agent an amount in cash sufficient to redeem all of the Securities called for redemption, including accrued interest to the date fixed for redemption, such notice shall state that it is subject to the receipt of redemption moneys by the paying agent before 10 a.m. Eastern Standard Time on the date fixed for redemption (unless such redemption is mandatory) and such notice shall be of no effect unless such moneys are so received on or before such date.

Each such notice of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any), specify the date fixed for redemption and the redemption price at which Securities of that series are to be redeemed, and shall state that payment of the redemption price of such Securities to be redeemed will be made at the office or agency of the Company designated in such notice, upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, that from and after said date interest will cease to accrue and that the redemption is for a sinking fund, if such is the case. If less than all the Securities of a series are to be redeemed, the notice to the holders of Securities of that series to be redeemed shall specify the particular Securities or portions of such Securities to be so redeemed. In case any Security is to be redeemed in part only, the notice which relates to such Security shall state the portion of the principal amount thereof to be redeemed, and shall state that on and after the redemption date, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

(b) The Company shall give the Trustee at least 45 days' notice in advance of the date fixed for redemption (unless the Trustee shall agree to a shorter period) and, in the case of redemption of less than all the Securities of a series, as to the aggregate principal amount of Securities of the series to be redeemed, and thereupon the Trustee shall select, by lot or in such other manner as it shall deem appropriate and fair in its discretion and which may provide for the selection of a portion or portions (equal to \$1,000 or any integral multiple thereof, subject to Sections 2.01(xi) and (xiv)) of the principal amount of such Securities of a denomination larger than \$1,000 (subject as aforesaid), the Securities to be redeemed and shall thereafter promptly

notify the Company in writing of the numbers of the Securities to be redeemed, in whole or in part.

(c) The Company may, if and whenever it shall so elect, by delivery of instructions signed on its behalf by an Authorized Officer, instruct the Trustee or any paying agent to call all or any part of the Securities of a particular series for redemption and to give notice of redemption in the manner set forth in this Section, such notice to be in the name of the Company or its own name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such paying agent, as the case may be, such Security Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section.

Section 3.03. (a) If the giving of notice of redemption shall have been completed as above provided, the Securities or portions of Securities of the series to be redeemed as specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with, subject to the Company Order or supplemental indenture hereto establishing the terms of such series of Securities, interest accrued to the date fixed for redemption and interest on such Securities or portions of Securities shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such redemption price and accrued interest with respect to any such Security or portion thereof. On presentation and surrender of such Securities on or after the date fixed for redemption at the place of payment specified in the notice, said Securities shall be paid and redeemed at the applicable redemption price for such series, together with, subject to the Company Order or supplemental indenture hereto establishing the terms of such series of Securities, interest accrued thereon to the date fixed for redemption.

(b) Upon presentation of any Security of such series which is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Security is presented shall deliver to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations in principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04. The provisions of Sections 3.04, 3.05 and 3.06 shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise specified as contemplated by Section 2.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.05. Each sinking fund payment shall be applied to the redemption of Securities of such series as provided for by the terms of Securities of such series.

Section 3.05. In lieu of making all or any part of a mandatory sinking fund payment with respect to a series of Securities in cash, and in satisfaction of all or a part of such mandatory sinking fund payment the Company may deliver to the Trustee Securities of that series theretofore purchased or otherwise acquired by the Company and receive a credit against the amount of such mandatory sinking fund payment in an amount equal to the principal amount of the Securities of such series so delivered; provided that, the Company may not deliver or receive a credit for the delivery of any Securities of such series (i) that previously have been purchased by the Company pursuant to a mandatory sinking fund payment, or (ii) as to which the Company has previously received a credit pursuant to this Section 3.05.

Section 3.06. Not less than 45 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 3.05 and the basis for such credit and will, together with such Officers' Certificate, deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02, except that the notice of redemption shall also state that the Securities of such series are being redeemed by operation of the sinking fund and the sinking fund payment date. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 3.03.

ARTICLE FOUR

PARTICULAR COVENANTS OF THE COMPANY

The Company covenants and agrees for each series of the Securities as follows:

Section 4.01. The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any) and interest on the Securities of that series at the time and place and in the manner provided herein and established with respect to such Securities.

Section 4.02. So long as any series of the Securities remain Outstanding, the Company agrees to maintain an office or agency with respect to each such series, which shall be in the Borough of Manhattan, the City and State of New York or at such other location or locations as may be designated as provided in this Section 4.02, where (i) Securities of that series may be presented for payment, (ii) Securities of that series may be presented as hereinabove authorized for registration of transfer and exchange, and (iii) notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by an Authorized Officer and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust

Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. The Trustee will initially act as paying agent for the Securities.

The Company also may from time to time, by written notice signed by an Authorized Officer and delivered to the Trustee, designate one or more other offices or agencies for the foregoing purposes within or outside the Borough of Manhattan, City of New York, 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 obligations to maintain an office or agency in the Borough of Manhattan, City of New York for the foregoing purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such other office or agency.

Section 4.03. (a) If the Company shall appoint one or more paying agents for all or any series of the Securities, other than the Trustee, the Company will cause each 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 all sums held by it as such agent for the payment of the principal of (and premium, if any) or interest on the Securities of that series (whether such sums have been paid to it by the Company or by any other obligor of such Securities) in trust for the benefit of the persons entitled thereto;

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

(3) that it will, at any time during the continuance of any failure referred to in the preceding paragraph (2) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(4) that it will perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to any series of the Securities, it will on or before each due date of the principal of (and premium, if any) or interest on Securities of that 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 interest so becoming due on Securities of that series until such sums shall be paid to such persons or otherwise disposed of as herein provided and will promptly notify the Trustee of such action, or any failure (by it or any other obligor on such Securities) to take such action.

Whenever the Company shall have one or more paying agents for any series of Securities, it will, prior to 10 a.m. Eastern Standard Time on each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with the paying agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the

benefit of the persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) Anything in this Section to the contrary notwithstanding, (i) the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 11.04, and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all sums held in trust by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by any paying agent to the Trustee, such paying agent shall be released from all further liability with respect to such money.

Section 4.04. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.05. The Company will not, while any of the Securities remain Outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to any other Person unless the provisions of Article Ten hereof are complied with.

Section 4.06. In the event that the Company issues a Discount Security, the Company shall file with the Trustee at or prior to the time of the authentication of such Discount Security a written notice, in such form as mutually agreed upon by the Company and the Trustee, specifying the amount of original issue discount that will be accrued on such Discount Security in each calendar year from the date of issuance to the maturity thereof.

ARTICLE FIVE

SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. The Company will furnish or cause to be furnished to the Trustee (a) on each regular record date (as defined in Section 2.03) for the Securities of each Tranche of a series a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of such Tranche of Securities as of such regular record date, provided, that the Company shall not be obligated to furnish or cause to be furnished such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, no such list need be furnished for any series for which the Trustee shall be the Security Registrar.

Section 5.02. (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 Securities contained in the most recent list furnished to it as provided in Section 5.01 and as to the names

and addresses of holders of Securities received by the Trustee in its capacity as Security Registrar (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

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

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

(2) inform such applicants as to the approximate number of holders of Securities of such series or of all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the provisions of subsection (a) of this Section 5.02, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

(d) If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each holder of such series or of all Securities, as the case may be, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of Securities of such series or of all Securities, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise, the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(e) Each and every holder of the Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities in accordance with the provisions of subsection (c) of this Section, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under said subsection (c).

Section 5.03. (a) The Company covenants and agrees to file with the Trustee, within 30 days after the Company is required to file the same with the Commission, a copy of the annual reports and of the information, documents and other reports (or a copy of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and, unless the Commission shall not accept such information, documents or reports, the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act, in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

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

(c) The Company covenants and agrees to transmit by mail, first class postage prepaid, or reputable over-night delivery service which provides for evidence of receipt, to the Securityholders, as their names and addresses appear upon the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) The Company covenants and agrees to furnish to the Trustee, on or before May 15 in each calendar year in which any of the Securities are Outstanding, or on or before such other day in each calendar year as the Company and the Trustee may from time to time agree upon, a certificate from the principal executive officer, principal financial officer or principal accounting officer, as to his or her knowledge, of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this subsection (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

(e) Delivery of such information, documents or reports to the Trustee pursuant to Section 5.03(a) or 5.03(b) is for informational purposes only and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or

determinable from information contained therein, including, in the case of Section 5.03(b), the Company's compliance with any of the covenants hereunder.

Section 5.04. (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each September 15th following the date of this Indenture deliver to Holders a brief report, dated as of such September 15th, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange and of any delisting thereof.

ARTICLE SIX

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

Section 6.01. (a) Whenever used herein with respect to Securities of a particular series, "Event of Default" means any one or more of the following events which has occurred and is continuing:

(1) default in the payment of any installment of interest upon any of the Securities of that series, as and when the same shall become due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an extension period);

(2) default in the payment of the principal of (or premium, if any, on) any of the Securities of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise;

(3) default in the making or satisfaction of any sinking fund payment or analogous obligation as and when the same shall become due and payable by the terms of the Securities of that series, and continuance of such default for a period of 30 days;

(4) 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 with respect to that series contained in such Securities or otherwise established with respect to that series of Securities pursuant to Section 2.01 hereof or contained in this Indenture (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of one or more series of Securities other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the

holders of at least twenty-five percent in aggregate principal amount of the Securities of that series at the time Outstanding;

(5) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation or reorganization of the Company under the Federal Bankruptcy Code or any other similar applicable Federal or State law, and such decree or order shall have continued unvacated and unstayed for a period of 90 consecutive days; or an involuntary case shall be commenced under such Code in respect of the Company and shall continue undismissed for a period of 90 consecutive days or an order for relief in such case shall have been entered; or a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 consecutive days;

(6) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking liquidation or reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or State law, or shall consent to the filing of any such petition, or shall consent to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors; or

(7) the occurrence of any other Event of Default with respect to Securities of such series, as contemplated by Section 2.01(x) hereof.

(b) The Company shall file with the Trustee written notice of the occurrence of any Event of Default within five Business Days of the Company's becoming aware of any such Event of Default. In each and every such case, unless the principal of all the Securities of that series shall have already become due and payable, either the Trustee or the holders of not less than twenty-five percent 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 such Securityholders), may declare the principal (or, if any of such Securities are Discount Securities, such portion of the principal amount thereof as may be specified by their terms as contemplated by Section 2.01) of all the 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 contained in this Indenture or in the Securities of that series or established with respect to that series pursuant to Section 2.01 hereof to the contrary notwithstanding.

(c) Section 6.01(b), however, is subject to the condition that if, at any time after the principal of the Securities of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the monies 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 that series and the principal of (and premium, if any, on) any and all Securities of that series which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Securities of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and any and all defaults under the Indenture, other than the nonpayment of principal on Securities of that series which shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06, then and in every such case the holders of a majority in aggregate principal amount of the Securities of that series then Outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences with respect to that series of Securities; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

Section 6.02. (a) The Company covenants that in case an Event of Default described in subsection 6.01(a)(1) or (a)(2) shall have occurred and be continuing, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the whole amount that then shall have become due and payable on all such Securities for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law and without duplication of any other amounts paid by the Company in respect thereof) upon overdue installments of interest at the rate per annum expressed in the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

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

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or other judicial proceedings affecting the Company, any other obligor on such Securities, or the creditors or property of either, the

Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Securities of such series allowed for the entire amount due and payable by the Company or such other obligor under this Indenture at the date of institution of such proceedings and for any additional amount which may become due and payable by the Company or such other obligor after such date, and to collect and receive any monies or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Securityholders, to pay to the Trustee any amount due it under Section 7.06.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Securities of that series, may be enforced by the Trustee without the possession of any of such Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or 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 payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Securities of such series.

In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

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

Section 6.03. Any monies collected by the Trustee pursuant to Section 6.02 with respect to a particular series of Securities shall be applied in the order following, at the date or dates fixed by the Trustee and, in case of the distribution of such monies on account of principal (or premium, if any) or interest, upon presentation of the several Securities of that series, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article 14.

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

FOURTH: To the Company.

Section 6.04. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to Securities of such series specifying such Event of Default, as hereinbefore provided, and unless also the holders of not less than twenty-five percent in aggregate principal amount of the Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions of this Indenture, however, the right of any holder of any Security to receive payment of the principal of (and premium, if any) and interest on such Security, as therein provided, on or after the respective due dates expressed in such Security (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder.

Section 6.05. (a) All powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any others thereof or of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Securities.

(b) No delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

Section 6.06. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding, determined in accordance with Section 8.04, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to such series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudicial to the rights of holders of Securities of any other series at the time Outstanding determined in accordance with Section 8.04 not parties thereto. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed might involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding affected thereby, determined in accordance with Section 8.04, may on behalf of the holders of all of the Securities of such series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Securities of that series as and when the same shall become due by the terms of such Securities otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal otherwise than by acceleration and any premium has been deposited with the Trustee (in accordance with Section 6.01(c))) or a call for redemption of Securities of that series. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 6.07. The Trustee shall, within 90 days after the occurrence of a default with respect to a particular series, transmit by mail, first class postage prepaid, to the holders of Securities of that series, as their names and addresses appear upon the Security Register, notice of all defaults with respect to that series known to the Trustee, unless such defaults shall have been cured or waived before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in subsections (1), (2), (3), (4), (5), (6) and (7) of Section 6.01(a), not including any periods of grace provided for therein and irrespective of the giving of notice provided for by subsection (4) of Section 6.01(a)); provided, that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Securities of that series or in the payment of any sinking or analogous fund installment established with respect to that series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determine that the withholding of such notice is in the interests of the holders of Securities of that series; provided

further, that in the case of any default of the character specified in Section 6.01(a)(4) with respect to Securities of such series no such notice to the holders of the Securities of that series shall be given until at least 30 days after the occurrence thereof.

The Trustee shall not be deemed to have knowledge of any default, except (i) a default under subsection (a)(1), (a)(2), (a)(3) or (a)(4) of Section 6.01 as long as the Trustee is acting as paying agent for such series of Securities or (ii) any default as to which the Trustee shall have received written notice or a Responsible Officer charged with the administration of this Indenture shall have obtained written notice.

Section 6.08. All parties to this Indenture agree, and each holder of each series of Securities issued pursuant to this Indenture, by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, 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 Securityholder, or group of Securityholders, holding more than 10% in aggregate principal amount of the Outstanding Securities of any series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security of such series, on or after the respective due dates expressed in such Security or established pursuant to this Indenture.

ARTICLE SEVEN

CONCERNING THE TRUSTEE

Section 7.01. (a) The Trustee, prior to the occurrence of an Event of Default with respect to Securities of a series and after the curing of all Events of Default with respect to Securities of that series which may have occurred, shall undertake to perform with respect to Securities of such series such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default with respect to Securities of a series has occurred (which has not been cured or waived), the Trustee shall exercise with respect to Securities of that 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.

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

(1) prior to the occurrence of an Event of Default with respect to Securities of a series and after the curing or waiving of all such Events of Default with respect to that series which may have occurred:

(i) the duties and obligations of the Trustee shall with respect to Securities of such series be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable with respect to Securities of such series except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to Securities of such series 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 (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

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

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

(4) none of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur or risk personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Trustee reasonably believes that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it.

(c) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

Section 7.02. Except as otherwise provided in Section 7.01:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report,

notice, request, direction, consent, order, demand, approval, bond, security or other paper or document believed by it (i) to be genuine and (ii) to have been signed or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an Officers' Certificate (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted 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 Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby; nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Securities (which has not been cured or waived) to exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and to 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;

(e) The Trustee shall not be liable for any action taken 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;

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, direction, order, demand, approval, bond, security, or other papers or documents, unless requested in writing so to do by the holders of not less than a majority in principal amount of the Outstanding Securities of the particular series affected thereby (determined as provided in Section 8.04); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand. Notwithstanding the foregoing, the Trustee, in its direction, may make such further inquiry or investigation into such facts or matters as it may see fit. In making any investigation required or authorized by this subparagraph, the Trustee shall be entitled to examine books, records and premises of the Company, personally or by agent or attorney;

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not

be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty;

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

(j) 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, which certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 7.03. (a) The recitals contained herein and in the Securities (other than the Certificate of Authentication on the Securities) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities, or for the use or application of any monies paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.01, or for the use or application of any monies received by any paying agent other than the Trustee.

Section 7.04. The Trustee or any paying agent or Security Registrar, 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, paying agent or Security Registrar.

Section 7.05. Subject to the provisions of Section 11.04, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any monies received by it hereunder except such as it may agree in writing with the Company to pay thereon.

Section 7.06. (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to such compensation as shall be agreed in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable

compensation and the reasonable expenses and disbursements of its counsel and agents and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any and all loss, liability or expense including taxes (other than taxes based upon the income of the Trustee) incurred without negligence, willful misconduct or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, or any Securityholder or any Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) The obligations of the Company under this Section to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances 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.

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

(d) The provisions of this Section 7.06 shall survive the satisfaction and discharge of this Indenture or the appointment of a successor trustee.

Section 7.07. Except as otherwise provided in 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 or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. If the Trustee has acquired or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 7.09. There shall at all times be a Trustee with respect to the Securities issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or other person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and

surplus of at least 50 million dollars, and subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. 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 shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. 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. (a) The Trustee or any successor hereafter appointed, may at any time resign with respect to the Securities of one or more series by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Securityholders of such series, as their names and addresses appear upon the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Securities of 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 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 at the expense of the Company may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Securities of such series, or any Securityholder of that series who has been a bona fide holder of a Security or Securities for at least six months may, subject to the provisions of Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section 7.07 after written request therefore by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

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

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

then, in any such case, the Company may remove the Trustee with respect to all Securities of each series issued pursuant to this Indenture and appoint a successor trustee 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 6.08, unless, with respect to subsection (b)(1) above, the Trustee's duty to resign is stayed as provided in Section 310(b) of the Trust Indenture Act, any Securityholder who has been a bona fide holder of a Security or Securities 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. 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 any series at the time Outstanding may at any time remove the Trustee with respect to such series and appoint a 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 removal, the Trustee being removed at the expense of the Company may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities of such series.

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

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Securities of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Securities of any particular series.

Section 7.11. (a) In case of the appointment hereunder of a successor trustee with respect to all Securities, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder, subject to any prior lien provided for in Section 7.06(b).

(b) 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 retiring Trustee and each successor trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates, (2) shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall

continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any act or failure to act on the part of any other Trustee hereunder; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall with respect to the Securities of that or those series to which the appointment of such successor trustee relates have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates; but, on request of the Company or any successor trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor trustee relates.

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

(d) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified under the Trust Indenture Act and eligible under this Article.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Security Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 7.12. 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 under the provisions of the Trust Indenture Act and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case 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. If and when the Trustee shall become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding collection of claims against the Company (or any other obligor upon the Securities).

ARTICLE EIGHT

CONCERNING THE SECURITYHOLDERS

Section 8.01. Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Securities of a particular series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage of that series have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Securities of that series in person or by agent or proxy appointed in writing.

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

In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, the principal amount of a Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01.

Section 8.02. Subject to the provisions of Section 7.01, proof of the execution of any instrument by a Securityholder (such proof will not require notarization) or his agent or proxy and proof of the holding by any person of any of the Securities shall be sufficient if made in the following manner:

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

(b) The ownership of Securities shall be proved by the Security Register of such Securities or by a certificate of the Security Registrar thereof.

(c) The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

Section 8.03. Prior to the due presentment for registration of transfer of any Security, the Company, the Trustee, any paying agent and any Security Registrar may deem and treat the person in whose name such Security shall be registered upon the books of the Company as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal of and premium, if any, and (subject to Section 2.03) interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

Section 8.04. In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, Securities of that series which are owned by the Company or any other obligor on the Securities of that series or by any person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on the Securities of that series 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 direction, consent or waiver, only Securities of such series which a Responsible Officer of the Trustee actually 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 pledge's right so to act with respect to 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 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. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series specified in this Indenture in connection with such action, any holder of a Security of that series 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, 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 in exchange therefore, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series 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 of that series.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 9.01. In addition to any supplemental indenture otherwise authorized by this Indenture, 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 then in effect), without the consent of the Securityholders, for one or more of the following purposes:

(a) to evidence the succession of another person to the Company, and the assumption by any such successor of the covenants of the Company contained herein or otherwise established with respect to the Securities; or

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the holders of the Securities of all or any series, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default with respect to such series permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the holders of a majority in aggregate principal amount of the Securities of such series to waive such default; or

(c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not be inconsistent with the provisions of this Indenture and shall not materially and adversely affect the interests of the holders of the Securities of any series; or

(d) to change or eliminate any of the provisions of this Indenture or to add any new provision to this Indenture; provided, however, that such change, elimination or addition shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provisions; or

(e) to establish the form or terms of Securities of any series as permitted by Section 2.01; or

(f) to add any additional Events of Default with respect to all or any series of Outstanding Securities; or

(g) to provide collateral security for the Securities; or

(h) to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any other matters incidental thereto; or

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

(j) to change any place or places where (1) the principal of and premium, if any, and interest, if any, on all or any series of Securities shall be payable, (2) all or any series of Securities may be surrendered for registration of transfer, (3) all or any series of Securities may be surrendered for exchange and (4) notices and demands to or upon the Company in respect of all or any series of Securities and this Indenture may be served; provided, however, that any such place shall be located in New York, New York or be the principal office of the Company; or

(k) to provide for the payment by the Company of additional amounts in respect of certain taxes imposed on certain holders and for the treatment of such additional amounts as interest and for all matters incidental thereto; or

(l) to provide for the issuance of Securities denominated in a currency other than Dollars or in a composite currency and for all matters incidental thereto.

Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date of the execution and delivery of this Indenture or at any time thereafter shall be amended and

(x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Indenture shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustee may, without the consent of any Securityholders, enter into a supplemental indenture hereto to effect or evidence such changes or additional provisions; or

(y) if any such amendment shall permit one or more changes to, or the elimination of, any provisions hereof which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein, this Indenture shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustee may, without the consent of any Securityholders, enter into a supplemental indenture hereto to effect such changes or elimination; or

(z) if, by reason of any such amendment, (i) one or more provisions which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein shall be deemed to be incorporated herein by reference or otherwise, made applicable hereto, and, (ii) one or more provisions which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be amended herein or omitted herefrom, shall be deemed to be so amended or omitted or otherwise made applicable hereto, and the Company and the Trustee may, without the consent of any Securityholders of any series, enter into a supplemental indenture hereto to effect the changes to this Indenture deemed made pursuant to this Section 9.01(z).

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

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

Section 9.02. 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 affected by such supplemental indenture or indentures at the time Outstanding 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 then in effect) 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, however, that no such supplemental indenture shall (i) extend the fixed maturity date or dates of any Securities of any series, (ii) extend the time of payment of interest or of any sinking fund payment, other than extensions permitted pursuant to Section 2.01, (iii) reduce the rate of interest on any Security, (iv) reduce the principal amount due for payment on any Security, (v) make the principal, premium, if any, or interest on a Security payable in any coin or currency other than that provided in such Security, (vi) modify any redemption or repurchase right to the detriment of a Securityholder, (vii) impair the right of any Securityholder to institute suit for payment, (viii) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture, or reduce the percentage of Securities, the holders of which are required to waive any covenant or default and its consequences, (ix) waive any past payment default, or (x) modify any provision of Section 9.02, without the consent of the holders of each Security then Outstanding and affected thereby.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders required to consent thereto 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.

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

It shall not be necessary for the consent of the Securityholders of any series affected thereby 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 Section, the Company shall transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Securityholders of all series affected thereby as their names and addresses appear upon the Security Register. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 9.03. Upon the execution of any supplemental indenture pursuant to the provisions of this Article or of Section 10.01 with respect to any series of Securities, this Indenture shall, with respect to such series, 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 of the series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. Securities of any series, affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article, Article Two or Article Seven or of Section 10.01, may bear a notation in form approved by the Company, provided such form meets the requirements of any exchange upon which such series may be listed, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of that series so modified as to conform, in the opinion of 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 in exchange for the Securities of that series then Outstanding.

Section 9.05. The Trustee, subject to the provisions of Section 7.01, shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article is

authorized or permitted by, and conforms to, the terms of this Article and that it is proper for the Trustee under the provisions of this Article to join in the execution thereof.

ARTICLE TEN

CONSOLIDATION, MERGER AND SALE

Section 10.01. The Company covenants that it will not merge into or consolidate with any other corporation or other Person (whether or not affiliated with the Company) or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property to any other corporation or other Person (whether or not affiliated with the Company or its successor or successors), unless (i) such other corporation or Person shall expressly assume the due and punctual payment of the principal of, and premium, if any, and interest on all the Securities of all series in accordance with the terms of each series, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture with respect to each series or established with respect to such series pursuant to Section 2.01 to be kept or performed by the Company by supplemental indenture satisfactory to the Trustee, executed and delivered to the Trustee by such corporation or Person and (ii) immediately after giving effect to such merger or consolidation, or such sale, conveyance, transfer or lease or other disposition, no Default or Event of Default shall have occurred and be continuing. Any Person may merge into or consolidate with the Company provided that the Company is the surviving corporation.

Section 10.02. (a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Securities of all series Outstanding and the due and punctual performance of all of the covenants and conditions of this Indenture or established with respect to each series of the Securities pursuant to Section 2.01 to be kept or performed by the Company with respect to each series, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and thereupon (provided, that in the case of a lease, the term of the lease is at least as long as the longest maturity of any Securities Outstanding at such time) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company or any other predecessor obligor on the Securities, 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 company, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the predecessor 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 the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

(c) Nothing contained in this Indenture or in any of the Securities shall prevent the Company from merging into itself or acquiring by purchase or otherwise all or any part of the property of any other corporation (whether or not affiliated with the Company).

The Trustee, subject to the provisions of Section 7.01, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article.

ARTICLE ELEVEN

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONIES

Section 11.01. Securities of a series may be defeased in accordance with their terms and, unless the Company Order or supplemental indenture establishing the series otherwise provides, in accordance with this Article.

The Company at any time may terminate as to a series of Securities all of its obligations for such series under this Indenture, including under Article 14, ("legal defeasance option"). The Company at any time may terminate as to a series of Securities its obligations, if any, under any restrictive covenant, including those contained pursuant to Sections 2.01(x) and 4.05, Article 10 and Article 14, which may be applicable to a particular series ("covenant defeasance option"). However, in the case of the legal defeasance option, the Company's obligations in Sections 2.05, 2.07, 4.02, 7.06, 7.10 and 11.04 shall survive until the Securities of the series are no longer Outstanding; thereafter the Company's obligations in Sections 7.06, 7.10 and 11.04 shall survive.

The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option with respect to a series of Securities, payment of the defeased series of Securities may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option with respect to a series of Securities, payment of the defeased series of Securities may not be accelerated because of an Event of Default under Sections 6.01(a)(4) and 6.01(a)(7).

The Company may exercise as to a series its legal defeasance option or its covenant defeasance option if:

- (a) the Company irrevocably deposits in trust with the Trustee money or Eligible Obligations sufficient, without regard to the investment or re-investment thereof, for the payment of principal of, and premium, if any, and interest on, the defeased series of Securities to maturity or redemption, as the case may be;

- (b) the Company delivers to the Trustee a certificate from an Authorized Officer demonstrating that the payments of principal and interest when due on the Eligible Obligations (assuming no reinvestment) together with the money, if any deposited (assuming no investment thereof) will provide cash at such times and in such amounts as will be sufficient to pay the principal, premium and interest when due on all the Securities of such defeased series to maturity or redemption, as the case may be;
- (c) 91 days pass after the deposit is made and during the 91-day period no Default specified in Sections 6.01(a)(5) or 6.01(a)(6) with respect to the Company occurs and is continuing at the end of such 91 day period;
- (d) no Default has occurred and is continuing on the date of such deposit and after giving effect thereto;
- (e) the deposit does not constitute a default under any other agreement binding on the Company;
- (f) in the event of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that the Company has received from the Internal Revenue Service a ruling, or 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 of Counsel shall confirm that, the holders of Securities of such defeased 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 event of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of Securities of such defeased 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; and
- (h) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities of such defeased series as contemplated by this Article XI have been complied with.

In the event the Company exercises its option to effect a covenant defeasance with respect to the Securities of any series as described above and the Securities of that series are thereafter declared due and payable because of the occurrence of any Event of Default other than the Event of Default caused by failing to comply with the covenants which are defeased, the amount of money and securities on deposit with the Trustee may not be sufficient to pay amounts due on the Securities of that series at the time of the acceleration resulting from such Event of Default. However, the Company shall remain liable for such payments.

Section 11.02. All monies or Eligible Obligations deposited with the Trustee pursuant to Section 11.01 shall be held in trust and shall be available for payment as due, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the Securities of the defeased series for the payment or redemption of which such monies or Eligible Obligations have been deposited with the Trustee.

Section 11.03. In connection with the satisfaction and discharge of this Indenture all monies or Eligible Obligations then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such monies or Eligible Obligations.

Section 11.04. Any monies or Eligible Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of or premium or interest on the Securities of the defeased series that are not so applied but remain unclaimed by the holders of such Securities for two years after the date upon which the principal of (and premium, if any) or interest on such Securities shall have respectively become due and payable, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, shall be repaid to the Company on the fifth (5th) Business Day following the expiration of such two year period, or if then held in trust by the Company for such purpose, shall be discharged from such trust; and thereupon the paying agent and the Trustee shall be released from all further liability with respect to such monies or Eligible Obligations, and the holder of any Securities of the defeased series entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof.

ARTICLE TWELVE

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation or other Person, either directly or through the Company or any such predecessor or successor corporation or other Person, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation or other Person, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the

obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Securities.

ARTICLE THIRTEEN

MISCELLANEOUS PROVISIONS

Section 13.01. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 13.02. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation or Person that shall at the time be the lawful sole successor of the Company.

Section 13.03. The Company by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company under this Indenture and thereupon such power so surrendered shall terminate both as to the Company and as to any successor corporation or Person.

Section 13.04. Except as otherwise expressly provided herein any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of any one or more series of Securities to or on the Company may be given or served by being deposited first class postage prepaid in a post office letter box addressed (until another address is filed in writing by the Company with the Trustee), as follows: Matrix Service Company, 10701 E. Ute Street, Tulsa, Oklahoma 74116-1517, with a copy to: Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 S. Boston Ave., Suite 400, Tulsa, Oklahoma 74103, Attention: Larry Sandel, Esq. Any notice, election, request or demand by the Company or any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

Section 13.05. 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 construed in accordance with the laws of said State, without regard to conflicts of laws provisions thereof.

Section 13.06. (a) 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 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 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.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture (other than the certificate provided pursuant to Section 5.03(d) of this Indenture) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 13.07. Except as provided pursuant to Section 2.01 pursuant to a Company Order, or established in one or more indentures supplemental to this Indenture, in any case where the date of maturity of principal or an Interest Payment Date of any Security or the date of redemption, purchase or repayment of any Security shall not be a Business Day then payment of interest or principal (and premium, if any) may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

Section 13.08. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the Trust Indenture Act, the duties imposed by the Trust Indenture Act shall control.

Section 13.09. 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.

Section 13.10. In case any one or more of the provisions contained in this Indenture or in the Securities of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such series of Securities or the Securities of any other series, but this Indenture and such affected series of Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 13.11. The Company will have the right at all times, and without the consent of the holders of any Securities, to assign any of its rights or obligations under the Indenture to a direct or indirect wholly owned subsidiary of the Company; provided that, in the event of any such assignment, the Company will remain liable for all such obligations. This Indenture may not otherwise be assigned by the parties thereto. Subject to the foregoing, this Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns.

Section 13.12. The Article and Section Headings in this Indenture and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 13.13. Whenever this Indenture provides for any action by, or the determination of any rights of, holders of Securities of any series in which not all of such

Securities are denominated in the same currency, in the absence of any provision to the contrary in the Company Order or supplemental indenture establishing such Security of any particular series, any amount in respect of any Security denominated in a currency other than Dollars shall be treated for any such action or determination of rights as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such series (if any) for such action or determination of rights (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action or determination of rights) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

ARTICLE FOURTEEN

SUBORDINATION OF DEBENTURES

Section 14.01. The Company covenants and agrees, and each Securityholder issued hereunder by his acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 14; and each person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof accepts and agrees to be bound by such provisions.

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

No provision of this Article 14 shall prevent the occurrence of any Default or Event of Default hereunder.

Section 14.02. In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Debt, or in the event that the maturity of any Senior Debt has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Securities until such default shall have been cured or waived in writing or shall have ceased to exist or such Senior Debt shall have been discharged or paid in full.

In the event of the acceleration of the maturity of the Securities, then no payment shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Securities until the holders of all Senior Debt Outstanding at the time of such acceleration shall receive payment in full of such Senior Debt (including any amounts due upon acceleration).

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee or any Securityholder when such payment is prohibited by the preceding paragraphs of this Section 14.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or

trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear.

Section 14.03. Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash property or securities, to creditors upon any liquidation, dissolution, winding up, receivership, reorganization, assignment for the benefit of creditors, marshaling of assets and liabilities or any bankruptcy, insolvency or similar proceedings of the Company, all amounts due or to become due upon all Senior Debt shall first be paid in full, in cash or cash equivalents, or payment thereof provided for in accordance with its terms, before any payment is made on account of the principal of, premium, if any, or interest on the indebtedness evidenced by the Securities, and upon any such liquidation, dissolution, winding up, receivership, reorganization, assignment, marshaling or proceeding, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Securityholders or the Trustee under this Indenture would be entitled except for the provisions of this Article 14, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Securityholders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Debt in full (including, without limitation, except to the extent, if any, prohibited by mandatory provisions of law, post-petition interest, in any such proceedings), after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to the holders of the indebtedness evidenced by the Securities or to the Trustee under this Indenture.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee under this Indenture or the holders of the Securities before all Senior Debt is paid in full or provision is made for such payment in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt may have been issued, as their respective interests may appear, for application to the payment of all Senior Debt remaining unpaid until all such Senior Debt shall have been paid in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

For purposes of this Article 14, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of arrangement, reorganization or readjustment, the payment of which is subordinated (at least to the extent provided in this Article 14 with respect to the Securities) to the payment of all Senior Debt which may at the time be Outstanding; provided, that (i) the Senior Debt is assumed by the new corporation, if any, resulting from any such arrangement, reorganization or readjustment, and (ii) the rights of the holders of the Senior Debt are not, without the consent of such holders, altered by such

arrangement, reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided in Article 10 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 10. Nothing in Section 14.02 or this Section 14.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Article 7, except as provided therein. This Section shall be subject to the further provisions of Section 14.06.

Section 14.04. Subject to the payment in full of all Senior Debt, the rights of the holders of the Securities shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of, premium, if any, and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the holders of the Securities or the Trustee on their behalf would be entitled except for the provisions of this Article 14 and no payment ever pursuant to the provisions of this Article 14 to the holders of Senior Debt by holders of the Securities or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Debt and the holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Debt; and no payments or distributions of cash, property or securities to or for the benefit of the Securityholders pursuant to the subrogation provisions of this Article, which would otherwise have been paid to the holders of Senior Debt shall be deemed to be a payment by the Company to or for the account of the Securities. It is understood that the provisions of this Article 14 are and are intended solely for the purpose of defining the relative rights of the holders of the Securities, on the one hand, and the holders of the Senior Debt, on the other hand.

Nothing contained in this Article 14 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Securities the principal, premium, if any, and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Securities and creditors of the Company other than the holders of the Senior Debt, nor shall anything herein or therein prevent the holder of any Security or the Trustee on his behalf from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 14 of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 14, the Trustee, subject to the provisions of Article 7, and the holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such liquidation, dissolution, winding up, receivership, reorganization, assignment or marshaling proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the

Trustee or to the holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 14.

Section 14.05. Each holder of a Security by his acceptance thereof authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 14 and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 14.06. The Company shall give prompt written notice to the Trustee and to any paying agent of any fact known to the Company which would prohibit the making of any payment of moneys to or by the Trustee or any paying agent in respect of the Securities pursuant to the provisions of this Article 14. Regardless of anything to the contrary contained in this Article 14 or elsewhere in this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Debt or of any default or event of default with respect to any Senior Debt or of any other facts which would prohibit the making of any payment of moneys to or by the Trustee, unless and until the Trustee shall have received notice in writing at its principal Corporate Trust Office to that effect signed by an officer of the Company, or by a holder or agent of a holder of Senior Debt who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such holder or agent, or by the trustee under any indenture pursuant to which Senior Debt shall be Outstanding, and, prior to the receipt of any such written notice, the Trustee shall, subject to the provisions of Article 7, be entitled to assume that no such facts exist; provided, however, that if on a date at least three Business Days prior to the date upon which by the terms hereof any such moneys shall become payable for any purpose (including, without limitation, the payment of the principal of, or interest on any Security) the Trustee shall not have received with respect to such moneys the notice provided for in this Section 14.06, then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive such moneys and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date.

The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee on behalf of such holder) to establish that such notice has been given by a holder of Senior Debt or a trustee on behalf of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article 14, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 14, and if such evidence is not furnished the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 14.07. The Trustee and any agent of the Company or the Trustee shall be entitled to all the rights set forth in this Article 14 with respect to any Senior Debt which may at any time be held by it in its individual or any other capacity to the same extent as any other

holder of Senior Debt and nothing in this Indenture shall deprive the Trustee or any such agent, of any of its rights as such holder. Nothing in this Article 14 shall apply to claims of, or payments to, the Trustee under or pursuant to Article 7.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 14, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and, subject to the provisions of Article 7, the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to holders of Securities, the Company or any other person moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article 14 or otherwise.

Section 14.08. No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Securityholders, without incurring responsibility to the Securityholders and without impairing or releasing the subordination provided in this Article 14 or the obligations hereunder of the holders of the Securities to the holders of such Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Debt, or otherwise amend or supplement in any manner such Senior Debt or any instrument evidencing the same or any agreement under which such Senior Debt is Outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Debt; (iii) release any Person liable in any manner for the collection of such Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company, as the case may be, and any other Person.

Section 14.09. In case at any time any paying agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 14 shall in such case (unless the context otherwise requires) be construed as extending to and including such paying agent within its meaning as fully for all intents and purposes as if such paying agent were named in this Article 14 in addition to or in place of the Trustee.

Section 14.10. Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of Governmental Obligations held in trust under Section 11.02 of this Indenture by the Trustee for the payment of principal of and interest on the Securities shall not be subordinated to the prior payment of any Senior Debt or subject to the restrictions set forth in this Article 14, and none of the Securityholders shall be obligated to pay over any such amount to the Company or any holder of Senior Debt or any other creditor of the Company.

_____, as Trustee, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

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

MATRIX SERVICE COMPANY

By _____

Name:

Title:

_____,
as Trustee

By _____

Name:

Title:

REGISTERED NO.

REGISTERED

MATRIX SERVICE COMPANY
Series _____ Subordinated Notes

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

The following summary of terms is subject to the provisions set forth below:

CUSIP:	OPTIONAL EXTENSION OF ORIGINAL MATURITY DATE: <input type="checkbox"/> Yes <input type="checkbox"/> No
ORIGINAL ISSUE DATE(S):	EXTENSION PERIOD:
PRINCIPAL AMOUNT:	NUMBER OF EXTENSION PERIODS:
MATURITY DATE:	FINAL MATURITY DATE:
INTEREST RATE:	ORIGINAL ISSUE DISCOUNT NOTE: <input type="checkbox"/> Yes <input type="checkbox"/> No
INTEREST PAYMENT DATES:	ISSUE PRICE (percentage of principal):
RECORD DATES:	YIELD TO MATURITY:
OPTIONAL REDEMPTION: <input type="checkbox"/> Yes <input type="checkbox"/> No	PREMIUM DUE UPON CERTAIN PREPAYMENTS <input type="checkbox"/> Yes <input type="checkbox"/> No
INITIAL REDEMPTION DATE:	
AMORTIZING NOTE: <input type="checkbox"/> Yes <input type="checkbox"/> No	
OPTION TO ELECT REPAYMENT: <input type="checkbox"/> Yes <input type="checkbox"/> No	

THE OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATED IN THE MANNER AND TO THE EXTENT SET FORTH IN ARTICLE 14 OF THE INDENTURE TO THE OBLIGATIONS (INCLUDING INTEREST) OWED BY THE COMPANY TO ALL SENIOR INDEBTEDNESS; AND EACH HOLDER HEREOF BY ITS ACCEPTANCE HEREOF SHALL BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AS SET FORTH IN SAID ARTICLE 14 OF THE INDENTURE.

Matrix Service Company, a Delaware corporation (herein called the “Company”, which term includes any successor Person under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to

or registered assigns the principal sum specified above, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, on the Maturity date specified above and to pay interest thereon, in such coin or currency, from and including the Original Issue Date (or if this Global Note has two or more Original Issue Dates, interest shall, beginning on each such Original Issue Date, begin to accrue for that part of the principal amount to which such Original Issue Date is applicable) specified above, or from and including the most recent Interest Payment Date specified above to which interest has been paid or duly provided for, as the case may be. Interest shall be paid in arrears [quarterly] on each Interest Payment Date in each year commencing on (a) the first such Interest Payment Date next succeeding the earliest Original Issue Date or Original Issue Dates, or (b) if such Original Issue Date is after a Record Date and prior to the first Interest Payment

Date, on the second Interest Payment Date, at the per annum Interest Rate set forth above until Maturity and the principal hereof is paid or made available for payment. The interest so payable and punctually paid or duly provided for on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note is registered at the close of business on the Record Date specified above next preceding such Interest Payment Date; provided, however, that if an Original Issue Date falls between a Record Date and the next Interest Payment Date, the first payment of interest with respect to such Original Issue Date will be paid on the second Interest Payment Date subsequent to such Original Issue Date to the Person in whose name this Note is registered at the close of business on the Record Date for such second Interest Payment Date; and provided, further, that interest payable on the Maturity date or, if applicable, upon redemption, shall be payable to the Person to whom principal shall be payable. Except as otherwise provided in the Indenture, any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and shall be paid to the Person in whose name this Note is registered at the close of business on a Record Date for the payment of such defaulted interest to be fixed by the Company, notice whereof shall be given to Noteholders not less than fifteen days prior to such Record Date. Payment of the principal of and any premium and interest on this Note shall be made on or before 10:30 A.M., New York City time or such other time (if this Note is a Global Note at such time) as shall be agreed upon between the Trustee and the Depositary, of the day on which such payment is due, by wire transfer into the account specified by the Depositary; provided, however, that as a condition to the payment at the Maturity date of any part of the principal and any applicable premium of this Global Note, the Depositary shall surrender, or cause to be surrendered, this Global Note to the Trustee; provided further, however, if this Note is not a Global Note at such time, as such of the foregoing is provided for in the Indenture referred to below. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer, but not any tax, assessment or governmental charge imposed on the Holder of this Note.

Under certain circumstances, this Global Note is exchangeable in whole or from time to time in part for a definitive individual Note or Notes, with the same Original Issue Date or Original Issue Dates, Maturity date, Interest Rate and redemption and other provisions as provided herein or in the Indenture.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS GLOBAL NOTE SET FORTH IN FULL ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH IN FULL AT THIS PLACE.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof, directly or through an Authenticating Agent, by manual signature of an authorized signatory, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

Matrix Service Company

By: _____

Name:

Title: President

By: _____

Name:

Title: Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

[TRUSTEE], as Trustee

By: _____
Authorized Signatory

[REVERSE OF NOTE]

MATRIX SERVICE COMPANY
SERIES _____ NOTES

Until such time as this Note is exchanged in whole or in part for definitive individual notes as herein and in the Indenture so provided, this Global Note is one of, and a global security which represents Notes which are part of, the duly authorized Notes of the Company (herein called the "Notes"), issued and to be issued under a Subordinated Note Indenture dated as of [_____], 2004 (herein called the "Indenture") between the Company and [Trustee], as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Noteholders, and of the terms upon which the Notes are, and are to be, authenticated and delivered.

Each Note shall be dated the date of its authentication by the Trustee. Each Note shall also bear an Original Issue Date or Original Issue Dates which with respect to this Global Note (or any portion thereof) shall mean the date or dates of the original issue of the Notes represented hereby as specified on the face hereof, and such Original Issue Date or Original Issue Dates shall remain the same for all Notes subsequently issued upon transfer, exchange or substitution of such original Note (or such subsequently issued Notes) regardless of their dates of authentication. The Notes may bear different dates, mature at different times, bear interest at different rates, be subject to different redemption provisions, if any, and may otherwise vary, all as provided in the Indenture.

Interest on this Note will be payable on the Interest Payment Date or Interest Payment Dates as specified on the face hereof and, in either case, at Maturity. Unless otherwise specified on the face hereof, payments on this Note with respect to any particular Interest Payment Date or the Maturity date will include interest accrued from and including the applicable Original Issue Date, or from and including the most recent Interest Payment Date to which interest has been paid or duly provided for, to but excluding the particular Interest Payment Date or the Maturity date. Interest on this Note will be computed and paid on the basis of a 360-day year of twelve 30-day months.

Unless otherwise specified on the face hereof, if this Note is an Amortizing Note, payments with respect to this Note will be applied first to interest due and payable hereon and then to the reduction of the unpaid principal amount hereof. If this Note is an Amortizing Note, a table setting forth the schedule of dates and amounts of payments of principal of and interest on this Note or the formula for the amortization of principal and/or interest is set forth in an annex attached to this Note.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, subordinate and junior in right of payment to the prior payment in full in cash (or as otherwise agreed) of all Senior Debt of the Company. Any holder by accepting this Note agrees to and shall be bound by the subordination provisions and authorizes the Trustee to give them effect and appoints the Trustee its attorney-in-fact for such purposes. In addition to all other rights of Senior Debt described in the Indenture, the Senior Debt shall continue to be Senior Debt and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any terms of any instrument relating to the Senior Debt or any extension or renewal of the Senior Debt or increase in amount thereof.

If any premium is payable on this Note as specified on the face of this Note in the event of any prepayments of principal, a table setting forth the terms of such premium shall be set forth on a schedule attached to this Note.

All percentages resulting from any calculation with respect to this Note will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from any such calculation with respect to this Note will be rounded to the nearest cent (with one-half cent being rounded upward).

“Business Day” means, unless otherwise specified on the face hereof, any Monday, Tuesday, Wednesday, Thursday or Friday that in the City of New York is not a day on which banking institutions are authorized or obligated by law, regulation or executive order to close. If an Interest Payment Date or Maturity for this Note falls on a day that is not a Business Day, payment of principal, premium, if any, and interest to be made on such day with respect to this Note will be made on the next day that is a Business Day with the same force and effect as if made on the due date, and no additional interest will be payable on the date of payment for the period from and after the due date as a result of such delayed payment.

This Note will be redeemable at the option of the Company prior to its Stated Maturity only if an Initial Redemption Date is specified on the face hereof. If so specified, this Note will be subject to redemption at the option of the Company on any date on and after such Initial Redemption Date in whole or from time to time in part in increments of \$1,000 or integral multiples thereof, at the redemption prices specified in an annex attached to this Note, plus accrued and unpaid interest to but excluding the date of redemption, but payments due with respect to this Note prior to the date of redemption will be payable to the Holder of this Note of record at the close of business on the relevant Record Date specified on the face hereof, all as provided in the Indenture. The Company may exercise such option by causing the Trustee to mail a notice of such redemption, at least 30 but not more than 60 calendar days prior to the date of redemption, in accordance with the provisions of the Indenture. In the event of redemption of this Note in part only, this Note will be cancelled and a new Note or Notes representing the unredeemed portion hereof will be issued in the name of the Holder hereof. This Note is not subject to a sinking fund unless otherwise specified in an annex attached hereto.

If so specified on the face of this Note, (i) this Note shall be subject to repayment, in whole or in part, prior to Stated Maturity at the option of the Holder on a certain date or dates and at a certain price or prices, plus accrued and unpaid interest to but excluding the date of payment; and (ii) the Stated Maturity of this Note may be extended at the option of the Company for one or more Extension Periods, as specified on the face hereof, up to but not beyond the Final Maturity Date specified on the face hereof, in each case in accordance with the provisions of the Indenture applicable thereto or any indenture supplemental thereto and/or as specified in an annex attached to this Note.

Notwithstanding anything herein to the contrary, if this Note is an Original Issue Discount Note as specified on the face hereof, the amount payable in the event the principal amount hereof is declared to be due and payable immediately by reason of an Event of Default or in the event of redemption or repayment hereof prior to the Stated Maturity hereof, in lieu of the principal amount due at the Stated Maturity hereof, shall be the Amortized Face Amount of this Note as of the date of declaration, redemption or repayment, as the case may be. The “Amortized Face Amount” of this Note shall be the amount equal to (a) the principal amount of this Note multiplied by the Issue Price specified on the face hereof plus (b) the portion of the difference between the dollar amount thus obtained and the principal amount hereof that has accreted at the Yield to Maturity specified on the face hereof (computed in accordance with generally accepted United States bond yield computation principles) to such date of declaration, redemption, or repayment but in no event shall the Amortized Face Amount of this Note exceed the principal amount stated on the face hereof.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Noteholders to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding that would be affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain covenants in the Indenture. The Indenture also provides that the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding may waive certain past defaults and their consequences on behalf of the Holders of all Notes. Any such consent or waiver by the Holder of this Global Note (if not timely revoked in accordance with the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders of this Global Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Global Note or such Note.

As set forth in, and subject to, the provisions of the Indenture, no Holder of any Notes will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have

previously given to the Trustee written notice of a continuing default with respect to the Notes, the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as Trustee, and the Trustee shall have failed to institute such proceeding within 60 days; provided, however, that such limitations do not apply to a suit instituted by the Holder hereof for the enforcement of payment of the principal of and any premium or interest on this Global Note on or after the respective due dates expressed herein.

If this Note is a Global Note it shall bear the following legend:

THIS NOTE IS A GLOBAL NOTE REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE THEREOF AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL NOTES REPRESENTED HEREBY, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

If at any time the Depositary for this Global Note notifies the Company that it is unwilling or unable to continue as Depositary for this Global Note or if at any time the Depositary for this Global Note shall no longer be registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or any successor statute or regulation, the Company may appoint a successor Depositary with respect to this Global Note. If (A) a successor Depositary for this Global Note is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, or (B) any Notes are represented by this Global Note at a time when an Event of Default with respect to the Notes shall have occurred and be continuing, then in each case the Company's election to issue this Note in global form shall no longer be effective with respect to this Global Note and the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Notes in exchange for this Global Note, shall authenticate and make available for delivery, individual Notes of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of this Global Note in exchange for this Global Note.

If agreed by the Company and the Depositary with respect to Notes issued in the form of this Global Note, the Depositary for such Global Note shall surrender this Global Note in exchange in whole or in part for individual Notes of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee shall authenticate and make available for delivery, without a service charge, (1) to each Person specified by such Depositary, a new Note or Notes of like tenor and terms, and of any authorized denominations as requested by such Person in aggregate principal amount equal to and in exchange for the beneficial interest of such Person in this Global Note, and (2) to such Depositary a new Global Note of like tenor and terms and in a denomination equal to the difference, if any, between the principal amount of this Global Note and the aggregate principal amount of Notes delivered to Holders thereof.

No reference herein to the Indenture and no provision of this Global Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Global Note at the times, places and rates, and in the coin or currency, herein prescribed.

The Indenture contains provisions for the satisfaction and discharge of the Indenture upon compliance by the Company with certain conditions specified therein, which provisions apply to this Note.

Prior to due presentment of this Global Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Global Note is registered as the owner hereof for all purposes, whether or not this Global Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Indenture and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

Exhibit A-6

All terms used in the Note which are defined in the Indenture but are not defined in this Note shall have the meanings assigned to them in the Indenture.

Exhibit A-7

OPTION TO ELECT REPAYMENT

(To be completed only if this Note is repayable at the option of the Holder and the Holder elects to exercise such rights)

The undersigned owner of this Note hereby irrevocably elects to have the Company repay the principal amount of this Note or portion hereof below designated at the applicable optional repayment price indicated on an annex attached hereto plus accrued and unpaid interest to but excluding the date of repayment, if this election is being made pursuant to the option referred to under "Option to Elect Repayment" on the face hereof. If a portion of this Note is not being repaid, specify the principal amount to be repaid and the denomination or denominations (which will be \$1,000 or an integral multiple thereof) of the Note or Notes to be issued to the Holder for the portion of this Note not being repaid (in the absence of any specification, one such Note will be issued for the portion not being repaid):

Dated: _____

Signature
Sign exactly as name appears on the front of this Note

Principal amount to be repaid if amount to be repaid and is less than the entire principal amount of this Note (principal amount remaining must be an authorized denomination)

Indicate address where check is to be sent:

\$ _____
(Which must be an integral multiple of \$1,000)

Social Security Or Other Taxpayer ID Number:

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

UNIT GIFT MIN ACT

____Custodian____
(Cust) (Minor)
Under Uniform Gifts
to Minors Act

TEN ENT - as tenants by the entities

JT TEN - as joint tenants with right of survivorship and not as
tenants in common

State

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sell(s)
assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF ASSIGNEE

Please print or typewrite name and address including postal zip code of assignee _____

_____ the within note and all rights thereunder, hereby irrevocably constituting and appointing _____
_____ attorney to transfer said note on the books of the Company, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature(s) to this assignment must correspond with the name(s) as written upon the face of the within instrument in every particular, without alteration or enlargement or any change whatever. The signature(s) must be guaranteed by an "eligible guarantor institution" that is a member or participant in the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Program.

FORM OF WARRANT AGREEMENT

This Agreement is made as of _____ between Matrix Service Company, a Delaware corporation (the “Company”), and [_____], (the “Warrant Agent”).

WITNESSETH:

WHEREAS, the Company proposes to issue one or more series of Warrants pursuant to, and subject to the terms and provisions of, this Agreement (the “Warrants”) to purchase Warrant Shares (as this and other capitalized terms used herein are defined in Section 1).; and

WHEREAS, the Company has entered into this Agreement to provide for (i) the appointment of a Warrant Agent, (ii) the countersignature of the Warrants by the Warrant Agent, (iii) the authorization and establishment of the terms and provisions of each series of Warrants, and (iv) the execution, issuance, registration, delivery, transfer and exchange of the certificates evidencing the Warrants (the “Warrant Certificates”).

NOW, THEREFORE, in order to declare the terms and conditions upon which the Warrants are and are to be authenticated, issued and delivered, and in consideration of the premises, of the purchase and acceptance of the Warrants by the holders thereof, the Company covenants and agrees with the Warrant Agent, for the benefit of the respective holders from time to time of the Warrants, as follows:

SECTION 1. Definitions. (a) The terms defined in this Section (except as in this Agreement otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement and any Warrant Certificate shall have the respective meanings specified in this Section.

“**Affiliate**” shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities (other than securities having such voting rights only by reason of the occurrence of a contingency which has not occurred), by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. The Trustee may request and may conclusively rely upon an Officers’ Certificate to determine whether any Person is an Affiliate of any specified Person.

“**Authorized Officer**” shall mean the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer or any other officer or agent of the Company duly authorized by the Board of Directors to act in respect of matters relating to this Agreement.

“**Affected Warrant**” shall mean any Warrant affected by the anti-dilution provisions of Section 13 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 copy of a resolution adopted by the Board of Directors establishing the terms and provisions of a series of Preferred Stock, a series of debt issuable under the Senior Note Indenture or a series of debt issuable under the Subordinated Note Indenture, in each case certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“Business Day” shall mean, with respect to any Warrant, (a) any Saturday or Sunday, and (b) any other day (i) in the State of New York, and (ii) in the State in which the Principal Office of the Warrant Agent is located, that is not a day on which banking institutions in such States are authorized or required by law or regulation to close.

“Call Date” shall mean the time and date after which the Warrants that have been called for redemption pursuant to Section 8 hereof shall no longer be exercisable and shall become null and void other than for the right to receive the redemption price therefor from the Company,

“Commission” shall mean the Securities and Exchange Commission, as from time to time constituted and created under the Securities Exchange Act of 1934, as amended.

“Common Stock” shall mean the common stock of the Company, \$0.01 par value per share.

“Company Securities” shall mean the Common Stock and each series (i) of debt of the Company issued under the Senior Note Indenture, (ii) of debt of the Company issued under the Subordinated Note Indenture, and (iii) of Preferred Stock established by the Board pursuant to a Board Resolution, that in each case are Warrant Shares issuable upon the exercise of a series of Warrants issued pursuant to this Agreement.

“Debt Securities” shall mean indebtedness of the Company issuable (i) upon the exercise of a Warrant, and (ii) pursuant to either a Senior Note Indenture or a Subordinated Note Indenture filed as Exhibits to the Company’s Registration Statement on Form S-3 (File No. 333-117077) (the “Registration Statement”) in connection with the registration under the Securities Act of 1933, as amended, of such Debt Securities and of shares of the Company’s Common Stock, \$0.01 par value, and Preferred Stock, \$0.01 par value.

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

“Exercise Date” shall mean, with respect to each series of Warrants issued under the Warrant Agreement, the time and date upon which such series first becomes exercisable.

“Exercise Period” shall mean the period commencing from and including the Exercise Date through and including the Expiration Date.

“Expiration Date” shall mean, other than the Call Date established in connection with a redemption of the Warrants pursuant to the Company’s right to redeem as provided in Section __ hereof, with respect to each series of Warrants issued under the Warrant Agreement, the time and date set forth in the Board Resolution establishing such series as the time and date after which the Warrants of such series shall no longer be exercisable and shall become null and void and of no further force or effect.

“Exercise Price” shall mean, with respect to each series of Warrants issued under the Warrant Agreement, the purchase price payable to acquire the Warrant Shares issuable upon the exercise of such Warrant, as the same may from time to time be adjusted as provided in Section 13 hereof.

“Market Value” shall mean, as of the date of any determination thereof, the closing price of a share of Common Stock on the the principal exchange on which the Common Stock is listed so long as such principal exchange is either (i) the NASDAQ National Market System, (ii) the NASDAQ SmallCap Market, (iii) the New York Stock Exchange, or (iv) the American Stock Exchange; provided that, for purposes of satisfying the 45 consecutive trading days requirement that is a precondition to the right of the Company to call for redemption any Warrants to purchase the Company’s Common Stock, if there have been no sales on such principal exchange on any day then, for purposes of satisfying not more than five (5) of such 45 trading days, the Company may use the average of the highest bid and lowest asked prices on any of such five (5) days by reference to the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or any Governmental Authority.

“Preferred Stock” shall mean a series of preferred stock of the Company authorized pursuant to a Board Resolution and issuable upon the exercise of a Warrant.

“Principal Office” means the office of the Warrant Agent where it performs its duties as Warrant Agent hereunder, which initially shall be the place identified in Section ___ hereof.

“Responsible Officer” when used with respect to the Warrant Agent, means any vice president, any assistant vice president or any other officer associated with the performance by the Warrant Agent of its duties hereunder.

“series” means a series of Warrants or the Warrants of a series established pursuant to this Agreement.

“Warrants” shall mean as such term is defined in the first WHEREAS clause hereof.

“Warrant Certificates” shall mean as such term is defined in the second WHEREAS hereof.

“Warrantholder”, “holder”, “holder of Warrants” or “registered holder” shall mean the person or persons in whose name or names a particular Warrant shall be registered on the books of the Warrant Agent kept for that purpose in accordance with the terms of this Agreement.

“Warrant Shares” shall mean the Company Securities issuable upon the exercise of a Warrant upon the terms and conditions set forth in the Board Resolution establishing the series of such Warrants. Warrant Shares may be issued separately or as a unit with one or more of the other Company Securities; provided that, if issued as a unit, separate Warrant Certificates shall be issued evidencing the right to purchase each of Company Securities comprising such unit.

(b) With reference to this Agreement and each Warrant, unless otherwise specified herein or in a Warrant Certificate:

- (i) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.”
- (ii) Unless the context requires otherwise, (A) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (B) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (C) the words “herein,” “hereof” and “hereunder,” and words of similar import shall be construed to refer to such document in its entirety and not to any particular provision thereof, (D) all references in a document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the document in which such references appear, and (E) any reference to any law (whether by reference to “laws” generally or to a specified law) shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(c) In the computation of periods of time with reference to a specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” the word “after” means “excluding” the referenced date, and the word “through” means “to and including the referenced date.”

(d) Section headings herein and in any Warrant Certificate are included for convenience of reference only and shall not affect the interpretation of this Agreement or such Warrant Certificate.

SECTION 2. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the terms and conditions of this Agreement, and the Warrant Agent hereby accepts such appointment. The Company may from time to time appoint such additional or substitute Warrant Agents as it may deem necessary or desirable.

SECTION 3. Warrants Generally. (a) The Warrants may be issued from time to time in one or more series and the aggregate number of Warrants which may be issued pursuant to this Agreement is unlimited. All Warrants of any one series shall be substantially identical except as to denomination.

(b) Each series of Warrants shall be authorized by a Board Resolution which shall specify and establish the terms of such series, which may include the following: (i) the title of the Warrants; (ii) the aggregate number of Warrants of such series; (iii) the price or prices at which the Warrants will be initially issued by the Company; (iv) the designation, amount, and terms of the Warrant Shares purchasable upon exercise of the warrants; (v) if a Warrant is issued together as a unit with one or more Warrants to purchase other Company Securities constituting the Warrant Shares and the date on and after which the Warrants comprising the unit will be separately transferable; (vi) the Exercise Price for each Warrant (which shall be the same for all Warrants of the same series); (vii) the Exercise Date and Expiration Date of each Warrant (which shall be the same for all Warrants of the same series) (viii) information with respect to book-entry procedures, if any; (ix) any provisions for adjustment of the Exercise Price of the Warrants and/or for adjustment in the number or dollar amount of Warrant Shares receivable upon exercise of the Warrants; (x) in the case of Warrants to purchase Preferred Stock, the designation of the series of such Preferred Stock and the liquidation, dividend, conversion and voting rights of such series; (xi) the name of the Warrant Agent (which may be the Company); (xii) in the case of Warrants to purchase Common Stock only, whether or not the Warrants are redeemable at the option of the Company and, if redeemable, the terms and conditions pertaining to such redemption, (xiii) a discussion of any material federal income tax considerations; (xiv) the currency or currencies, including composite currencies, in which payment of the Exercise Price of the Warrants shall be payable, if other than Dollars; (xv) in the case of Warrants to purchase a series of debt securities, whether or not such debt securities are subordinated to "Senior Debt" of the Company; and, if subordinated, a description of what constitutes "Senior Debt", any restrictions imposed upon payment of the subordinated debt, the interest rate and payment terms of the subordinated debt, the Exercise Price of the Warrants and the principal amount of such subordinated debt that may be purchased upon the exercise of the Warrants upon payment of the Exercise Price; and (xvi) any other material terms of the Warrants, including terms, procedures, and limitations relating to the Warrants if different from those contained in this Agreement.

(c) The Board Resolution establishing a series of Warrants shall also establish the authorized denominations of any Warrant Certificates and the authorized denominations of the Warrant Shares issuable upon the exercise of each Warrant. Unless otherwise provided in the Board Resolution establishing a series of Warrants,

- (i) the authorized denominations of Warrant Certificates shall be as set forth in the Board Resolution,
- (ii) the authorized denomination of Common Stock issuable upon the exercise of a Warrant to purchase Common Stock shall be one share of Common Stock per one Warrant.
- (iii) the authorized denomination of a share of a series of Preferred Stock issuable upon the exercise of a Warrant to purchase such series of Preferred Stock shall be one share of such series of Preferred Stock per one Warrant.
- (iv) the authorized denomination of a series of Debt Securities issuable upon the exercise of a Warrant to purchase a series of such Debt Securities shall be as set forth in the Board Resolution establishing such series of Warrants.

SECTION 4. Form of Warrant Certificates. The Warrant Certificates (including the Form of Exercise attached thereto used to exercise the Warrants and the Form of Assignment attached thereto used to transfer the Warrants to another person) shall be in registered form only and shall be in substantially the form set forth as Exhibit A (Warrant to Purchase Common Stock), Exhibit B (Warrant to Purchase a series of Preferred Stock), Exhibit C (Warrant to Purchase a series of Senior Debt) and Exhibit D (Warrant to Purchase a series of Subordinated Debt). The Warrant Certificates shall be printed, lithographed or engraved and may have such letters, numbers of other marks identifying and distinguishing each series of Warrants from another series of Warrants.

The Warrant Certificates will also have such legends, summaries or endorsements as are not inconsistent with the terms of this Agreement as the Company may deem appropriate (i) to satisfy the requirements of Section 2 above, (ii) to comply with any law, (iii) to comply with any rule or regulation of any stock exchange on which the Warrants and/or the Warrant Shares may from time to time be listed, or (iv) to conform to general usage. Each Warrant Certificate shall state on its face the name of the registered holder thereof, the number of Warrants evidenced by the Warrant Certificate, the date of issuance of the Warrant Certificate by the Warrant Agent, whether upon initial issuance or upon a subsequent transfer or exchange, and, subject to adjustments due to events occurring after the date of issuance of the Warrant Certificate, the Exercise Price per Warrant and the Warrant Share issuable upon the exercise of each Warrant.

SECTION 5. Issuance of Warrant Certificates; Countersignature and Registration.

(a) Except as otherwise provided in this Agreement, Warrant Certificates not to exceed in the aggregate the number of Warrants set forth in the Board Resolution establishing a series of Warrants may be executed by the Company and delivered to the Warrant Agent for authentication, and the Warrant Agent shall thereupon authenticate and deliver such Warrant Certificates to or upon the written order of the Company signed by any two of its Authorized Officers, without further action by the Company hereunder.

(b) The Warrant Certificates shall be executed on behalf of the Company by facsimile signature. The Warrant Certificates shall be manually countersigned by the Warrant Agent and shall not be valid for any purpose unless so countersigned. In case any Authorized Officer of the Company who shall have signed any Warrant Certificate shall cease to be an Authorized Officer of the Company before countersignature by a Warrant Agent and the issuance and delivery of the Warrant Certificate by the Company, such Warrant Certificate may, nevertheless, be countersigned by the Warrant Agent, and issued and delivered with the same force and effect as though the person who signed such Warrant Certificate on behalf of the Company had not ceased to be an Authorized Officer of the Company. Any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be an Authorized Officer of the Company, to sign such Warrant Certificate although at the date of the execution of this Agreement such person was not an Authorized Officer. Upon countersignature by the Warrant Agent and delivery, the Warrant Certificate shall be valid and binding upon the Company, and the holder thereof shall be entitled to all the benefits of this Agreement.

(c) The Warrant Agent shall keep or cause to be kept at its Principal Office books for registration and the registration of transfer of the Warrant Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Warrant Certificates, the number of Warrants evidenced on the face of each Warrant Certificate, and the date of each Warrant Certificate.

SECTION 6. Transfer, Split Up, Combination and Exchange of Warrant Certificates; Mutilated, Destroyed, Lost or Stolen Warrant Certificates.

(a) Subject to:

- (i) the provisions of this Agreement relating to the absence of fractional Warrants and fractional Warrant Shares;
- (ii) the satisfaction of any restrictions on transferability that may appear on a Warrant Certificate in accordance with the terms hereof;

- (iii) the delivery to the Warrant Agent of proof reasonably satisfactory to the Warrant Agent with respect to the identity of the registered holder of the Warrant Certificate and the genuineness and effectiveness of any signature on any surrendered Warrant Certificate; and
- (iv) payment to the Warrant Agent of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Warrant Certificates,

then any Warrant Certificate, with or without other Warrant Certificates, may be transferred, split up, combined or exchanged for another Warrant Certificate or Warrant Certificates of authorized denominations representing in the aggregate a like number of Warrants.

(b) Any registered holder desiring to register the transfer of, or to split up, combine or exchange, any Warrant Certificate may do so by making such request in writing delivered to the Warrant Agent, and surrendering such Warrant Certificate or Warrant Certificates to the Warrant Agent at its Principal Office. Thereupon, the Warrant Agent shall, subject to the satisfaction of the foregoing conditions, countersign and deliver to the person entitled thereto a Warrant Certificate or Warrant Certificates of authorized denominations as so requested by the registered holder.

(c) Upon receipt by the Company and the Warrant Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Warrant Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and reimbursement to the Company and such Warrant Agent of all reasonable expenses incidental thereto, and upon surrender and cancellation of the Warrant Certificate if mutilated, the Company will make and deliver a new Warrant Certificate of like tenor for the same number of Warrants to such Warrant Agent for delivery to the registered owner in lieu of the Warrant Certificates so lost, stolen, destroyed or mutilated.

SECTION 7. Subsequent Issue of Warrant Certificates. Subsequent to their original issuance, no new or additional Warrant Certificates shall be issued except:

- (a) upon any transfer, combination, split up or exchange of Warrants pursuant to Section 5 hereof;
- (b) in replacement of mutilated, destroyed, lost or stolen Warrant Certificates pursuant to Section 5 hereof;
- (c) pursuant to Section 7 hereof, upon the partial exercise of Warrants represented by a Warrant Certificate to evidence the unexercised Warrants represented by such Warrant Certificate; and
- (d) pursuant to Sections 13(g) or 21 hereof.

All Warrants evidenced by Warrant Certificates of the same series shall rank part passu with one another regardless of the actual date of issue of the Warrant Certificate of that series.

SECTION 8. Exercise of Warrants; Exercise Price; Expiration Date of Warrants; Call of Warrants.

(a) Each Warrant of the same series may be exercised from and after the Exercise Date for such series and shall expire and no longer be exercisable after the Expiration Date for such series.

(b) The registered holder(s) of Warrants which are then exercisable shall have the right to purchase from the Company, and the Company shall issue and sell to such holder(s), the Warrant Shares issuable upon the exercise of such Warrants upon delivery to, and the receipt of the following by, the Warrant Agent at its Principal Office:

- (i) payment of (A) the aggregate Exercise Price for the total number of Warrants being exercised, *plus* (B) an amount equal to any applicable transfer tax, in each case in cash or by certified or official bank check or bank draft or money order payable to the order of the Company; and
- (ii) the Warrant Certificate(s) to be exercised evidencing not less than the total number of Warrants being exercised, with the Form of Exercise attached thereto duly completed and signed by the registered holder and accompanied by proof reasonably satisfactory to the Warrant Agent with respect to the identity of the registered holder and with a guarantee of the genuineness of the signature of the registered holder.

(c) Promptly after receipt of the foregoing, the Warrant Agent shall cause the Warrant Shares to be delivered to or upon the order of such registered holder(s) in such form as is required by the terms of the Warrants so exercised and surrendered.

(d) In case the registered holder of any Warrant Certificate shall exercise fewer than all of the Warrants evidenced by the Warrant Certificate(s) surrendered to the Warrant Agent pursuant to the above, a new Warrant Certificate evidencing Warrants equal in amount to the Warrants remaining unexercised shall be issued by the Warrant Agent to the registered holder of such Warrant Certificate or to his duly authorized assignee, subject to the provisions of Section 15 hereof.

(e) The Warrant Agent shall account promptly to the Company with respect to Warrants exercised and concurrently pay to the Company all monies received through the exercise of Warrants.

SECTION 9. Redemption of Warrants to Purchase Common Stock by the Company.

(a) If the Board adopts a Board Resolution establishing a series of Warrants (i) that are exercisable for Warrant Shares consisting solely of Common Stock of the Company, (ii) that are exercisable for a number of Warrant Shares constituting not less than one percent (1%) of the number of shares of Common Stock issued and outstanding at the time such Board Resolution is adopted, and (iii) have an Exercise Period greater than five (5) years, the Board may, in its discretion, include in such Board Resolution a provision granting to the Board the right from time to time to call for redemption at ten cents (\$0.10) per Warrant all or a part of such series of Warrants upon satisfaction of the following conditions:

- (i) the Market Value per share of the Common Stock of the Company has been 150% or more of the Exercise Price of the Warrant per share of Common Stock for the forty-five (45) consecutive Trading Days ending not later than the seventh calendar day prior to the day on which the Company gives written notice of redemption to the Warrant Agent and the Warrantholders pursuant to this Section 8;
- (ii) the Warrant Agent shall have mailed written notice of redemption made by the Company pursuant to this Section 8 to the registered holders of the Warrants at least 30 days prior to the Call Date set forth in such notice; and
- (iii) the Warrant Shares are subject to an effective registration statement under the 1933 Act at the time a notice of redemption is given to the Warrant Agent and to the Warrantholders and at all times thereafter through the Call Date allowing resale of the Warrant Shares on the principal exchange on which the Company's Common Stock is listed for trading.

(b) Notice of the redemption also shall be given no more than 20 days nor less than 10 days prior to the Call Date in a manner consistent with the publication of the Company's quarterly earnings by the Company, including posting such notice on the Company's Web site. The Company shall also provide notification of the redemption by publishing in two regional publications of the Wall Street Journal having circulation in the areas

where the registry of the registered holders of the series of Warrants to be redeemed indicates the greatest number of the Warrants to be redeemed are located.

(c) Any notice given pursuant to this Section shall state the Call Date, the Exercise Price of the series of Warrants to be redeemed, the recent market price of the Common Stock and its relation to the Exercise Price, the redemption price payable for Warrants not redeemed and the procedures for the surrender of redeemed Warrants and the payment of the redemption price.

(d) Each Warrant Holder shall continue to have the right to exercise the warrants until the Call Date by satisfying the requirements applicable to the exercise of a Warrant.

SECTION 10. Cancellation and Destruction of Warrant Certificates. All Warrant Certificates surrendered for the purpose of exercise, exchange, substitution or registration of transfer shall, if surrendered to the Company or to any of its agents, be delivered to the Warrant Agent for cancellation or in cancelled form or, if surrendered to Warrant Agent, shall be cancelled by it. The Company shall deliver to the Warrant Agent for cancellation and retirement, and such Warrant Agent shall so cancel and retire, any other Warrant Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Warrant Agent shall deliver all cancelled Warrant Certificates to the Company, or shall, at the written request of the Company, destroy such cancelled Warrant Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

SECTION 11. Reservation and Availability of Warrant Shares.

(a) The Company will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Common Stock, Preferred Stock and Debt Securities for the purpose of enabling it to satisfy any obligation to issue Warrant Shares upon exercise of Warrants, the full number of the components of the Warrant Shares deliverable upon the exercise of all outstanding Warrants.

(b) Before taking any action which would cause a reduction of the Exercise Price pursuant to Section 13, the Company will take any corporate action which may, in the opinion of its counsel (which may be counsel employed by the Company), be necessary in order that the Company may validly and legally issue (i) Warrant Shares at the Exercise Price as so adjusted, and which (ii) in the case of Warrant Shares constituting Common Stock and Preferred Stock, shall be fully paid and non-assessable.

(c) The Company covenants that all Common Stock and Preferred Stock which may be issued upon exercise of Warrants will, upon the issuance of such Common Stock and Preferred Stock in consideration for the payment of the Exercise Price, be fully paid and non-assessable and free from all taxes, liens, charges and security interests with respect to the issue thereof.

(d) The Warrant Agent is hereby authorized to requisition from time to time from the transfer agent for the Company's Common Stock and Preferred Stock, and from the Trustee under any indenture under which Debt Securities comprising all or a part of the Warrant Shares may be issued, and any subsequent transfer agent or Trustee of such of the Company's securities comprising Warrant Shares, certificates or other instruments evidencing the Warrant Shares that are required to honor outstanding Warrants. The Company hereby directs its present and shall direct any future transfer agents and applicable trustees to comply with all such requests. The Company will supply such transfer agents and such trustees with duly executed certificates or instruments for such purpose and will itself provide or otherwise make available any cash which may be payable in respect of fractional Warrants or fractional Warrant Shares.

(e) If any Company Securities comprising Warrant Shares are or become listed on any securities exchange in the United States, the Company shall use its best efforts to cause such Warrant Shares to be listed on each such exchange upon official notice of issuance and to keep such listing effective until all Warrants exercisable for such Company Securities have been exercised.

(f) The Company shall pay when due any and all U.S. federal and state transfer taxes and charges which may be payable in respect of the initial issuance of the Warrant Certificates or of any Warrant Shares upon the exercise of Warrants. The Company shall not, however, be required to pay any tax which may be imposed in respect of any transfer or delivery of Warrant Certificates in a name or to a person other than the registered holder of the Warrant Certificates surrendered for such transfer or delivery or may be imposed in respect of any issuance, transfer or delivery of any certificates or instruments for Warrant Shares to be registered in a name other than that of the registered holder of the Warrant Certificate surrendered for exercise or for delivery of any certificates for Warrant Shares upon the exercise of any Warrants until any such tax shall have been paid (any such tax being payable by the holder of such Warrant Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax is due.

SECTION 12. Warrant Share Record Date. Each person in whose name any certificate or instrument for Warrant Shares is issued upon the exercise of Warrants shall for all purposes be deemed to have become the holder of record of the Warrant Shares represented thereby. Such certificate for the Warrant Shares shall be dated the date upon which the Warrant Certificate evidencing such Warrants, together with reasonable proof of the identity of the registered holder and the genuineness and effectiveness of any signature on any surrendered Warrant Certificate and payment of the Exercise Price (and any applicable transfer taxes) was duly received by a Warrant Agent. Prior to the exercise of the Warrants evidenced thereby, the holder of a Warrant Certificate shall not be entitled to any rights of a holder of Warrant Shares, nor shall such holder have any rights under the Indenture in respect of any Debt Securities included in the Warrant Shares, including, without limitation, the right to vote, consent, receive dividends or interest or other distributions, except as set forth herein, or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

SECTION 13. Adjustment of Securities Issuable, Exercise Price and Number of Warrants.

(a) The Exercise Price per Warrant Share purchasable upon the exercise of each series of Affected Warrants and the number of Warrant Shares purchasable upon the exercise of each Affected Warrant (the "Warrant Rate") shall be subject to adjustment from time to time as hereinafter provided. Upon each adjustment of the Warrant Rate, the registered owner of each Affected Warrant then outstanding shall thereafter be entitled, upon surrender of the Warrant Certificate evidencing the Affected Warrant for exercise on or before the Expiration Date or the Call Date, as the case may be, applicable to such Affected Warrant, and payment of the adjusted Exercise Price in respect thereof, to receive the number or amount of Warrant Shares and other property, if any, at the Warrant Rate as so adjusted.

(b) In the event the Company shall (i) pay a dividend in Company Securities, subdivide the outstanding Company Securities, (iii) combine the outstanding Company Securities into a smaller number or lesser amount, (iv) reclassify Company Securities, (v) issue Company Securities or rights to purchase Company Securities, in each case at a price that is less than the current market price (as determined in subsection 13(c) below at the record date mentioned below), (vi) distribute to all holders of its capital evidences of its indebtedness or any of its assets (excluding cash dividends or cash distributions) or rights to subscribe thereto, then, in the case of clauses (i) through (v) above, the Warrant Rate in effect immediately prior thereto shall be appropriately adjusted so that the holder of any Affected Warrant thereafter surrendered for exercise shall be entitled to receive the number of Warrant Shares at the Warrant Rate as so adjusted and, in the case of clause (vi) above, the holder of any affected Warrant thereafter surrendered for exercise shall be entitled to receive the Warrant Shares issuable upon the exercise of the Affected Warrant at the Warrant Rate then in effect, *plus* that amount of indebtedness, assets or rights that such holder would have received had such holder exercised the Affected Warrant on the day prior the the record date set for persons entitled to receive such indebtedness, assets or rights. An adjustment made pursuant to this subsection 13(b) shall become effective as of the record date or the effective date of any such event.

(c) For the purpose of any computation of the current market price per trading unit of any Company Securities at any date shall be,

- (i) if such Company Security is listed for trading on any national securities exchange, the average of the daily closing bid and closing asked prices for the 20 consecutive trading days ending five (5) business days before the day in question, or
- (ii) if the Company Security is not listed or admitted for trading on any national securities exchange, then the current market price shall be as determined in good faith by the Board of Directors of the Company.

(d) No adjustment in the Warrant Rate shall be required unless such adjustment would require an increase or decrease of at least 1% therein; provided that, any adjustments which by reason of this Section 13(d) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations of the Warrant Rate under this Section 13 shall be made to the nearest one-hundredth of a share or to the nearest one dollar of principal amount.

(e) Whenever there is an adjustment in the Warrant Rate as herein provided, the Exercise Price payable upon exercise of each Affected Warrant shall also be adjusted by multiplying the Exercise Price in effect immediately prior to such adjustment of the Warrant Rate by a fraction of which the numerator shall be the number of shares or principal amount of Company Securities purchasable upon the exercise of one Warrant of the series that included an Affected Warrant immediately prior to such adjustment of the Warrant Rate, and of which the denominator shall be the number of shares or principal amount so purchasable under one Affected Warrant immediately thereafter; provided that if, as a result of any adjustments made pursuant hereto, the holder of each Affected Warrant shall become entitled to receive shares of two or more series or classes of capital stock of the Company or evidences of indebtedness of two or more series of Debt, the Board of Directors of the Company (whose determination shall be conclusive and shall be described in a statement filed with the Warrant Agent) shall allocate the Exercise Price in effect immediately prior to such adjustment between or among such classes or series and the Exercise Price in respect of series or class shall thereafter be the price as so allocated.

(f) In the event of any consolidation of the Company with or merger of the Company with or into another entity, or in the event of any sale or conveyance to another entity of all or substantially all of the property of the Company, the Company, or such successor purchasing person, as the case may be, shall execute and deliver to the Warrant Agent an agreement, in form satisfactory to the Warrant Agent, providing that the holder of each Warrant then outstanding, upon surrender for exercise thereof, shall have the right thereafter, in accordance with the terms hereof, to receive the kind and amount, if any, of shares of stock and other securities and property receivable upon such consolidation, merger, sale or conveyance by a holder of the number of which would have been received by him upon surrender for exercise of such Warrants immediately prior to such consolidation, merger, sale or conveyance. Such agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 13. The Company shall not effect any such sale wherein the property to be distributed to the holders of Common Stock consists principally of securities, or any such consolidation or merger, unless prior to the consummation thereof adequate provision is made for the assumption by the successor entity (if other than the Company) resulting from such consolidation or merger or the entity purchasing such assets, of the obligation to deliver to such holders such shares of stock, securities or assets as such holder may be entitled to acquire in accordance with the foregoing provisions. The provisions of this Section 13(h) shall similarly apply to successive consolidations, mergers, sales and conveyances.

Notice of the execution of such agreement shall be given by the Company to the registered holders of Warrants within ten (10) days after the execution of such agreement at his last address appearing on the register of the Company. Failure to give any such notice, or any defect therein, shall not affect the validity of any such consolidation, merger, sale, or conveyance.

(g) Whenever any adjustment is made in the Warrant Rate and the Exercise Price as herein provided, the Company shall promptly file with the Warrant Agent an independent accountant's certificate setting forth the effective date of such adjustment, the effect of such adjustment and a brief statement of the facts requiring such adjustment. Such certificate shall be conclusive evidence of the correctness of such adjustment and the Warrant Agent (if other than the Company) shall be under no duty or responsibility with respect to any such certificate except

to exhibit the same from time to time to any registered holder of an Affected Warrant desiring an inspection thereof. The Company shall promptly mail or cause to be mailed notice of each such adjustment to each registered holder of an Affected Warrant at his last address appearing on the register of the Company.

(h) In the event at any time:

- (i) the Company shall pay any dividend payable in Company Securities upon its Company Securities or make any distribution (other than regular cash dividends or interest paid at an established annual rate) to the holders of its Company Securities;
- (ii) the Company shall offer for subscription pro rata to the holders of its Company Securities any shares of any class or series of its capital stock or other rights; or
- (iii) there shall be any capital reorganization, or reclassification of the capital stock of the Company, or consolidation or merger of the Company with or sale of all or substantially all of its assets to another corporation;

then in any one or more of said events, the Company shall give notice to each registered holder of a Warrant Certificate of the date on which (A) the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights, or (B) such reorganization, reclassification, consolidation, merger or sale shall become effective, as the case may be. Such notice shall also specify the date as of which the holders of Company Securities of record shall participate in such dividend, distribution or subscription rights, or shall be entitled to exchange their Company Securities for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger or sale, as the case may be. Such notice shall be mailed to each registered holder of a Warrant Certificate at least 45 days prior to the action in question and not less than 45 days prior to any record date or the date on which the Company's transfer books are closed in respect thereto; provided, however, that failure to give such notice shall not affect the validity of any such action.

SECTION 14. Obtaining of Governmental Approvals. The Company will from time to time take all action which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and should make all securities acts filings under United States federal and state laws which may be or become requisite in connection with the issuance, sale, transfer and delivery of the Warrant Certificates, the exercise of the Warrants and the issuance, sale, transfer and delivery of the Warrant Shares issued upon exercise of the Warrants.

SECTION 15. Fractional Warrants and Fractional Shares.

(a) The Company shall not be required to issue fractions of Warrants on any distribution of Warrants to holders of Warrant Certificates pursuant to Section 13 or to distribute Warrant Certificates which evidence fractional Warrants. In lieu of such fractional Warrants, there shall be paid to the registered holders of Warrant Certificates with regard to which such fractional Warrants would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Warrant. For purposes of this Section 15(a), the current market value of a Warrant shall be (i) if such Warrant is listed for trading on a national securities exchange, the closing price of the Warrant for the trading day immediately prior to the date on which a fractional Warrant would have been otherwise issuable, and (ii) if such Warrant is not listed for trading on a national securities exchange, as determined by the Board of Directors.

(b) If the number of Warrant Shares purchasable upon the exercise of each Affected Warrant is adjusted pursuant to Section 13, the Company shall nonetheless not be required to issue certificates evidencing Warrant Shares in fractions of authorized denominations upon exercise of the Affected Warrants. In lieu of certificates for fractional Warrant Shares, there shall be paid to the registered holders of Warrant Certificates evidencing Affected Warrants at the time such Warrants are exercised as herein provided an amount in cash equal to the same fraction of the current market value of the fraction of the Warrant Share. For purposes of this Section 15(b), the current market value shall be determined as provided in Section 15(a).

SECTION 16. Rights of Action. All rights of action in respect of this Agreement are vested in the respective registered holders of the Warrant Certificates; and any registered holder of any Warrant Certificate, without the consent of the Warrant Agent or of the holder of any other Warrant Certificate, may, in his own behalf and for his own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of his right to exercise the Warrants evidenced by such Warrant Certificate in the manner provided in such Warrant Certificate and in this Agreement.

SECTION 17. Agreement of Warrant Certificate Holders. Every holder of a Warrant Certificate by accepting the same consents and agrees with the Company and the Warrant Agent and with every other holder of a Warrant Certificate that:

(a) transfer of the Warrant Certificates shall be registered on the registry books of the Warrant Agent only if surrendered at the Principal Office of the Warrant Agent set forth beneath the signature of the Warrant Agent on the signature page to this Agreement, duly endorsed or accompanied by a proper instrument of transfer; and

(b) prior to due presentment for registration of transfer, the Company and the Warrant Agent may deem and treat the person in whose name the Warrant Certificate is registered as the absolute owner thereof and of the Warrants evidenced thereby (notwithstanding any notations of ownership or writing on the Warrant Certificates made by anyone other than the Company or the Warrant Agent) for all purposes whatsoever, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

SECTION 18. The Warrant Agent. The Warrant Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Warrants, by their acceptance thereof, shall be bound:

(a) The statements contained herein and in the Warrant Certificates shall be taken as statements of the Company and the Warrant Agent assumes no responsibility for the correctness of any of the same except such as describe such Warrant Agent or action taken or to be taken by it. The Warrant Agent assumes no responsibility with respect to the distribution of the Warrant Certificates except as herein otherwise provided.

(b) The Warrant Agent shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrant Certificates to be complied with by the Company.

(c) The Warrant Agent may consult at any time with counsel satisfactory to it (who may be counsel for the Company), and the Warrant Agent shall incur no liability or responsibility to the Company or to any holder of any Warrant Certificate in respect of any action taken in accordance with the opinion or the advice of such counsel, provided such Warrant Agent shall have exercised reasonable care in the selection and continued employment of such counsel.

(d) The Warrant Agent shall incur no liability or responsibility to the Company or to any holder of any Warrant Certificate for any action taken in reliance on any notice, resolution, waiver, consent, order, certificates, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(e) The Company agrees to pay to the Warrant Agent reasonable compensation for the services rendered by such Warrant Agent in the execution of this Agreement, to reimburse such Warrant Agent for all expenses, taxes and governmental charges and other charges of any kind and nature incurred by such Warrant Agent in the execution of this Agreement, and to indemnify such Warrant Agent and hold it harmless against any and all liabilities, including judgments, expenses and counsel fees, for anything done or omitted by such Warrant Agent in connection with this Agreement except as a result of the Warrant Agent's negligence or bad faith.

(f) Except as otherwise provided by law, the Warrant Agent and any shareholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend

money to or otherwise act as fully and freely as though it were not a Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

(g) The Warrant Agent shall act hereunder solely as agent for the Company, and its duties shall be determined solely by the provisions hereof and of the Warrant Certificate. The Warrant Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement except for its own negligence or bad faith.

(h) The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, President or any Vice President, or the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer.

SECTION 19. Change of Warrant Agents. The Warrant Agent may resign and be discharged from its duties under this Agreement by giving to the Company notice in writing, and by giving notice in writing by first class mail, postage prepaid, to each registered holder of a Warrant Certificate at his address appearing in the registry books of the Warrant Agent, specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days prior to the date so specified. The Company may remove the Warrant Agent or any successor warrant agent upon 30 days' notice in writing, mailed to such Warrant Agent and any successor warrant agent and to each transfer agent of the Common Shares by registered or certified mail, and to the holders of Warrant Certificates at their addresses appearing in such registry books. If any Warrant Agent shall resign or shall otherwise become incapable of acting, the Company shall appoint a successor to such Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent or by the registered holder of a Warrant Certificate, then the registered holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a successor to such Warrant Agent. Pending appointment of a successor to a Warrant Agent, either by the Company or by such a court, the duties of such Warrant Agent shall be carried out by the Company. Any warrant agent that is to be the successor of the Warrant Agent or any of its successors, whether appointed by the Company or by such a court, shall be a registered transfer agent, bank or trust company in good standing, incorporated under the laws of any State or of the United States of America, and having its principal office in the United States, and if a bank or trust company, having at the time of its appointment as warrant agent a combined capital and surplus of at least \$25,000,000. After appointment, any successor warrant agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the former Warrant Agent shall deliver and transfer to the successor warrant agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Failure to give any notice provided for in this Section, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor warrant agent, as the case may be. The Company may at any time no earlier than one month after the Expiration Date terminate the appointment of the Warrant Agent.

SECTION 20. Maintenance of Office. As long as any of the Warrant Certificates remain unexercised, the Company will maintain an office or agency within the United States, where the Warrant Certificates may be presented for registration, transfer, exchange or exercise pursuant to the terms of this Agreement, and where notices and demands to or upon the Company in respect of the Warrants, Warrant Certificates or this Agreement may be served. The Principal Office of the Warrant Agent shall be the office or agency for such purposes.

SECTION 21. Issuance of New Warrant Certificates. Notwithstanding any of the provisions of this Agreement or of the Warrants to the contrary, the Company may, at its option, issue new Warrant Certificates evidencing Warrants in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price and the number or kind or class of shares of stock or other securities or property purchasable under the several Warrant Certificates made in accordance with the provisions of this Agreement.

SECTION 22. Expiration of Warrants. To the extent that any Warrant Certificates remain outstanding after the Expiration Date, the unexercised Warrants represented thereby shall be void and of no effect.

SECTION 23. Notices. Notices or demands authorized by this Agreement to be given or made by the Warrant Agent or by the holder of any Warrant Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Warrant Agent) as follows:

Matrix Service Company
10701 E. Ute Street
Tulsa, Oklahoma 74116-1517
Attention: Chief Financial Officer

Except as otherwise expressly set forth in this Agreement, any notice or demand authorized by this Agreement to be given or made by the Company, or by the holder of any Warrant Certificate to or on the Warrant Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to the Warrant Agent at its address appearing beneath its signature on the signature page hereto.

Notices or demands authorized by this Agreement to be given by the Company or the Warrant Agent to the holder of any Warrant Certificate shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Warrant Agent.

SECTION 24. Supplements and Amendments. The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any holders of Warrant Certificates in order to cure any ambiguity, to correct or supplement any provision contained herein which may be defective or inconsistent with any provisions herein, or to make any other provisions in regard to matters or questions arising hereunder which the Company and the Warrant Agent may deem necessary or desirable and which shall not adversely affect the interests of the holders of Warrant Certificates.

SECTION 25. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

SECTION 26. Benefits of this Agreement. This Agreement is for the sole and exclusive benefit of the Company, the Warrant Agent and the registered holders of Warrant Certificates, and nothing in this Agreement shall be construed to give to any person or corporation, other than the Company, the Warrant Agent and the registered holders of the Warrant Certificates, any legal or equitable right, remedy or claim under this Agreement.

SECTION 27. New York Law. This Agreement and each Warrant Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of New York without regard to the conflict of law provisions thereof.

SECTION 28. Counterparts. This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 29. Descriptive Headings. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof or thereof.

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

MATRIX SERVICE COMPANY

By: _____
Name:
Title:

[WARRANT AGENT]

By: _____
Name:
Title:

Address of Principal Office:

**Form of Warrant Certificate
For Common Stock**

MATRIX SERVICE COMPANY

SERIES [] WARRANTS

WARRANT CERTIFICATE TO ACQUIRE COMMON STOCK,
\$.01 PAR VALUE, OF MATRIX SERVICE COMPANY

**Void After 4:00 P.M. New York City, New York Time
on _____ (the "Expiration Date")**

REGISTERED NUMBER: _____

CUSIP: _____

THIS WARRANT IS REDEEMABLE
AT THE OPTION OF THE COMPANY: Yes No

THIS WARRANT IS PART OF A UNIT
AND MAY NOT BE TRADED SEPARATELY
UNTIL THE SEPARATION DATE: Yes No

THE SEPARATION DATE IS: _____

THIS CERTIFIES THAT

is the registered holder of [spell out number] (insert numerical number) Series [] Warrants (the "Warrants") of MATRIX SERVICE COMPANY, a Delaware corporation (the "Company"). Each Warrant entitles the holder thereof the right to purchase at any time after [insert Exercise Date] (the "Exercise Date") and on or before 4:00 P.M. New York City, New York time on [insert Expiration Date] (the "Expiration Date"), one fully paid and non-assessable share of Common Stock, \$.01 par value (the "Common Stock"), of the Company upon payment therefor in cash at the rate initially of [spell out exercise price][insert numerical number] per share of such Common Stock (the "Exercise Price"), subject to the adjustments, terms and conditions herein and in the Warrant Agreement between the Company and [insert name of Warrant Agent], as Warrant Agent, dated as of _____, 200_ (as the same may from time to time be amended, the "Warrant Agreement"). If at any time no other Warrant Agent is acting for the Company, the Company shall be deemed the Warrant Agent.

This Warrant Certificate is issued pursuant to the terms and provisions of the Warrant Agreement and each holder of a Warrant is entitled to the benefits thereof. The Warrant Agreement provides, among other things, for adjustment of the Exercise Price and the number of shares of Common Stock issuable upon exercise of this Warrant Certificate in certain events, including the issuance of Common Stock as a stock dividend; sub-divisions, combinations and reclassifications of the Common Stock; the distribution to all holders of Common Stock of

evidences of indebtedness, assets (excluding cash dividends) or rights to subscribe to any of the foregoing; and certain mergers, consolidations and sales of substantially all the assets of the Company. Upon each such adjustment, notice thereof will be given by filing a statement thereof with the Warrant Agent and by mailing a copy of such notice to all registered holders of Warrant Certificates.

No fractional shares of Common Stock will be issued upon the exercise of a Warrant; instead, the Warrant holder will be entitled to receive cash for such fractional interest at current market value.

IF THESE WARRANTS ARE REDEEMABLE at the option of the Company because the box above has been checked indicating that these Warrants are redeemable and a legend to that effect appears in bold face above, then the Warrants evidenced by this Warrant Certificate are redeemable by the Company, in whole or in part, on not less than 30 days' prior written notice given to the Warrant Agent and the Warrant Holders at a redemption price of \$.10 per Warrant (the "redemption price"). If less than all of the Warrants outstanding are to be redeemed, then the Warrants to be redeemed shall be chosen by lot.

The redemption date for the Warrants to be redeemed shall be at 4:00 P.M. New York City, New York time on the date set forth in such notice as the date for redemption of the Warrants (the "Redemption Date") provided that, (i) the closing price of the Common Stock on the principal exchange on which the Common Stock is listed for trading has been at least 150% of the then effective Exercise Price per share of Common Stock for the 45 consecutive trading days ending not later than the seventh day prior to the day on which the Company gives its written notice of redemption to the Warrant Agent and the Warrant Holders (after taking into account any combinations, reclassifications and the like of the Common Stock during such period that would have the effect of increasing the market price of the Common Stock), and (ii) the Warrant Shares are subject to an effective registration statement under the Securities Act of 1933, as amended, (the "Act") at the time a notice of redemption is given and at all times thereafter through the Redemption Date allowing a resale of the Warrant Shares after exercise of the Warrants on the principal exchange on which the Common Stock is listed for trading. On and after the Redemption Date, each holder of the Warrants called for redemption who has not prior to the Redemption Date exercised such Warrants shall surrender the Warrant Certificate evidencing such unexercised Warrants to the Warrant Agent at the place designated in the notice of redemption and shall thereupon be entitled to receive payment of the redemption price for each Warrant so surrendered.

If notice of redemption shall have been duly given, and if on or before the Redemption, Date funds necessary for the redemption of all Warrants called for redemption shall have been deposited by the Company with the Warrant Agent in a non-interest bearing segregated account, then, notwithstanding that the Warrant Certificates evidencing any Warrants called for redemption shall not have been surrendered, all rights under, pursuant to and with respect to the Warrants called for redemption shall forthwith after such date cease and determine, except only the right of the holders to receive the redemption price from the Warrant Agent out of funds on deposit in such segregated account without interest upon surrender to the Warrant Agent of the Warrant Certificates therefor.

Holders of a Warrant called for redemption shall have the right to exercise such Warrants and purchase the Warrant Shares upon exercise of the Warrants and the satisfaction of the conditions applicable to the exercise of a Warrant as set forth herein and in the Warrant Agreement until 4:00 P.M., New York City, New York time, on the Redemption Date. Any Warrants called for redemption and not exercised on or prior to the Redemption Date shall thereafter only be entitled to receive the redemption price therefor and otherwise such Warrants shall be terminated and be of no further force or effect

Each Warrant represented hereby may be exercised by the presentment and delivery of the following to the Warrant Agent at its Principal Office:

- (a) presentation and surrender of this Warrant Certificate with the Form of Exercise attached hereto duly completed and executed by the holder in whose name this Warrant Certificate is registered.

- (b) delivery of proof reasonably satisfactory to the Warrant Agent as to the identity of the registered holder of this Warrant Certificate and as to the genuineness and effectiveness of the signature of the registered holder.
- (c) delivery of proof reasonably satisfactory to the Warrant Agent as to the genuineness and effectiveness of the signature of the registered holder, including a guarantee of the genuineness of the signature of the registered holder by a bank or by brokerage firm.
- (d) payment of the Exercise Price for the number of Warrants being exercised which may be by cash or by certified or official bank check or bank draft or money order payable to the order of the Company.
- (e) if the Warrants or the Warrant Shares are being transferred to a person other than the registered holder, a duly completed and executed Form of Assignment attached hereto or a separate instrument of transfer duly completed and executed by the registered holder with signature of the registered holder "guaranteed" as described in paragraph (c) above.
- (f) In the event that the number of Warrants so exercised is less than the total number of Warrants evidenced by this Warrant Certificate, there will be issued to the person so exercising the Warrants, or his registered assigns, a new Warrant Certificate representing the number of Warrants not exercised.

In the event of the liquidation, dissolution or winding-up of the Company, in cases where the property to be distributed to the holders of Common Stock of the Company consists principally of other than securities of another entity which shall have purchased all or substantially all of the Company's assets, the right to exercise Warrants shall terminate at the close of business on the fourth full business day before the earliest date fixed for the payment of any amount distributable on the Common Stock of the Company; provided that, at least 45 days prior thereto, notice of such payment date shall have been given by the Warrant Agent in writing to all registered holders of Warrant Certificates. Warrants shall terminate and shall be of no further force and effect at such close of business on such fourth full business day.

Holders of Warrant Certificates, as such holders, shall have no voting or any other rights of a stockholder of the Company, shall have no right, other than the right evidenced hereby, to purchase or receive Common Stock of the Company, shall not be entitled to subscribe to or purchase any additional or increased stock of the Company of any class, whether now or hereafter authorized, or obligations convertible into any class or classes of stock, or stock of any class convertible into stock of any other class or classes, or obligations, stock or other securities carrying warrants or rights to subscribe to stock of the Company of any class or classes, whether now or hereafter authorized.

This Warrant Certificate is transferable by the registered holder in person or by his duly authorized attorney on the books of the Company at the office of the Warrant Agent upon surrender of this Certificate with the Form of Assignment attached hereto duly endorsed or with other appropriate instruments of transfer duly endorsed with signature guaranteed and payment of any transfer taxes or other governmental charges in connection with such transfer.

This Warrant Certificate is exchangeable for Warrant Certificates of different denominations at the Principal Office of the Warrant Agent upon surrender of this Warrant Certificate, duly endorsed or with appropriate instruments of transfer. Warrant Certificates issued upon transfers and exchanges shall be issued only for full Warrants or an integral multiple thereof. Warrant Certificates that are surrendered to the Warrant Agent for transfer shall be canceled.

Unless sooner terminated as provided herein upon exercise or upon liquidation, dissolution or winding-up of the Company, the purchase rights under the Warrants shall terminate on the Expiration Date and thereafter the Warrants represented by this Certificate shall be of no further force and effect.

FORM OF EXERCISE

The undersigned hereby irrevocably exercises ____ Warrants to subscribe for and purchase shares of Common Stock of the within named Company evidenced by this Warrant Certificate and herewith makes payment of the Exercise Price in full. Kindly issue certificates for shares of Common Stock in accordance with the instructions given below. A Warrant Certificate for the unexercised balance of the Warrants evidenced by the within Warrants Certificate, if any, will be registered in the name of the undersigned.

DATED: _____

Instructions for Registration of Common Stock

Name (please print)

Social Security or Other identifying Number;

ADDRESS:

Street

City, State and Zip Code

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____, as Attorney-in-Fact, with full power and authority in the name, place and stead of the registered holder of this Warrant Certificate to transfer the within Warrant Certificate on the books of the within named Company, with full power of substitution.

Dated: _____

Signature of Registered Holder
(Signature must conform in all respects to name of the holder as specified on the face of this Warrant certificate)

Social Security or Tax I.D. No. of Holder

**Form of Warrant Certificate
For Series [] Preferred Stock**

MATRIX SERVICE COMPANY

SERIES [] WARRANTS

WARRANT CERTIFICATE TO ACQUIRE SERIES [] PREFERRED STOCK,
\$.01 PAR VALUE, OF MATRIX SERVICE COMPANY

**Void After 4:00 P.M. New York City, New York Time
on _____ (the "Expiration Date")**

REGISTERED NUMBER: _____

CUSIP: _____

THIS WARRANT IS PART OF A UNIT
AND MAY NOT BE TRADED SEPARATELY
UNTIL THE SEPARATION DATE: Yes No

THE SEPARATION DATE IS: _____

THIS CERTIFIES THAT

is the registered holder of [spell out number] (insert numerical number) Series [] Warrants (the "Warrants") of MATRIX SERVICE COMPANY, a Delaware corporation (the "Company"). Each Warrant entitles the holder thereof the right to purchase at any time after [insert Exercise Date] (the "Exercise Date") and on or before 4:00 P.M. New York City, New York time on [insert Expiration Date] (the "Expiration Date"), one fully paid and non-assessable share of Series [] Preferred Stock, \$.01 par value (the "Series [] Preferred Stock"), of the Company upon payment therefor in cash at the rate initially of [spell out exercise price] [insert numerical number] per share of such Series [] Preferred Stock (the "Exercise Price"), subject to the adjustments, terms and conditions herein and in the Warrant Agreement between the Company and [insert name of Warrant Agent], as Warrant Agent, dated as of _____, 200- (as the same may from time to time be amended, the "Warrant Agreement"). If at any time no other Warrant Agent is acting for the Company, the Company shall be deemed the Warrant Agent.

This Warrant Certificate is issued pursuant to the terms and provisions of the Warrant Agreement and each holder of a Warrant is entitled to the benefits thereof. The Warrant Agreement provides, among other things, for adjustment of the Exercise Price and the number of shares of Series [] Preferred Stock issuable upon exercise of this Warrant Certificate in certain events, including the issuance of Series [] Preferred Stock as a stock dividend; sub-divisions, combinations and reclassifications of the Series [] Preferred Stock; the distribution to all holders of Series [] Preferred Stock of evidences of indebtedness, assets (excluding cash dividends) or rights to subscribe to any of the foregoing; and certain mergers, consolidations and sales of substantially all the assets of the Company. Upon each such adjustment, notice thereof will be given by filing a statement thereof with the Warrant Agent and by mailing a copy of such notice to all registered holders of Warrant Certificates.

No fractional shares of Series [] Preferred Stock will be issued upon the exercise of a Warrant; instead, the Warrant holder will be entitled to receive cash for such fractional interest at current market value.

Each Warrant represented hereby may be exercised by the presentment and delivery of the following to the Warrant Agent at its Principal Office:

- (a) presentation and surrender of this Warrant Certificate with the Form of Exercise attached hereto duly completed and executed by the holder in whose name this Warrant Certificate is registered.
- (b) delivery of proof reasonably satisfactory to the Warrant Agent as to the identity of the registered holder of this Warrant Certificate and as to the genuineness and effectiveness of the signature of the registered holder.
- (c) delivery of proof reasonably satisfactory to the Warrant Agent as to the genuineness and effectiveness of the signature of the registered holder, including a guarantee of the genuineness of the signature of the registered holder by a bank or by brokerage firm.
- (d) payment of the Exercise Price for the number of Warrants being exercised which may be by cash or by certified or official bank check or bank draft or money order payable to the order of the Company.
- (e) if the Warrants or the Warrant Shares are being transferred to a person other than the registered holder, a duly completed and executed Form of Assignment attached hereto or a separate instrument of transfer duly completed and executed by the registered holder with signature of the registered holder "guaranteed" as described in paragraph (c) above.
- (f) In the event that the number of Warrants so exercised is less than the total number of Warrants evidenced by this Warrant Certificate, there will be issued to the person so exercising the Warrants, or his registered assigns, a new Warrant Certificate representing the number of Warrants not exercised.

In the event of the liquidation, dissolution or winding-up of the Company, in cases where the property to be distributed to the holders of Series [] Preferred Stock of the Company consists principally of other than securities of another entity which shall have purchased all or substantially all of the Company's assets, the right to exercise Warrants shall terminate at the close of business on the fourth full business day before the earliest date fixed for the payment of any amount distributable on the Series [] Preferred Stock of the Company; provided that, at least 45 days prior thereto, notice of such payment date shall have been given by the Warrant Agent in writing to all registered holders of Warrant Certificates. Warrants shall terminate and shall be of no further force and effect at such close of business on such fourth full business day.

Holders of Warrant Certificates, as such holders, shall have none of the rights that would inure to the holder of shares of Series [] Preferred Stock, shall have no right, other than the right evidenced hereby, to purchase or receive shares of Series [] Preferred Stock of the Company, shall not be entitled to subscribe to or purchase any additional or increased stock of the Company of any class, whether now or hereafter authorized, or obligations convertible into any class or classes of stock, or stock of any class convertible into stock of any other class or classes, or obligations, stock or other securities carrying warrants or rights to subscribe to stock of the Company of any class or classes, whether now or hereafter authorized.

This Warrant Certificate is transferable by the registered holder in person or by his duly authorized attorney on the books of the Company at the office of the Warrant Agent upon surrender of this Certificate with the Form of Assignment attached hereto duly endorsed or with other appropriate instruments of transfer duly endorsed with signature guaranteed and payment of any transfer taxes or other governmental charges in connection with such transfer.

FORM OF EXERCISE

The undersigned hereby irrevocably exercises ____ Warrants to subscribe for and purchase shares of Series [] Preferred Stock of the within named Company evidenced by this Warrant Certificate and herewith makes payment of the Exercise Price in full. Kindly issue certificates for shares of Series [] Preferred Stock in accordance with the instructions given below. A Warrant Certificate for the unexercised balance of the Warrants evidenced by the within Warrants Certificate, if any, will be registered in the name of the undersigned.

DATED: _____

Instructions for Registration of Series [] Preferred Stock

Name (please print)

Social Security or Other identifying Number;

ADDRESS:

Street

City, State and Zip Code

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____, as Attorney-in-Fact, with full power and authority in the name, place and stead of the registered holder of this Warrant Certificate to transfer the within Warrant Certificate on the books of the within named Company, with full power of substitution.

Dated:

Signature of Registered Holder

(Signature must conform in all respects to name of the holder as specified on the face of this Warrant certificate)

Social Security or Tax I.D. No. of Holder

**Form of Warrant Certificate
For Series [] Debt**

MATRIX SERVICE COMPANY

SERIES [] WARRANTS

WARRANT CERTIFICATE TO ACQUIRE SERIES [] DEBT,
OF MATRIX SERVICE COMPANY

**Void After 4:00 P.M. New York City, New York Time
on _____ (the "Expiration Date")**

REGISTERED NUMBER: _____

CUSIP: _____

THIS WARRANT IS PART OF A UNIT
AND MAY NOT BE TRADED SEPARATELY
UNTIL THE SEPARATION DATE: Yes No

THE SEPARATION DATE IS: _____

THIS CERTIFIES THAT

is the registered holder of [spell out number] (insert numerical number) Series [] Warrants (the "Warrants") of MATRIX SERVICE COMPANY, a Delaware corporation (the "Company"). Each Warrant entitles the holder thereof the right to purchase at any time after [insert Exercise Date] (the "Exercise Date") and on or before 4:00 P.M. New York City, New York time on [insert Expiration Date] (the "Expiration Date"), \$_____ of the principal amount (the "Debt Portion") of the Series [] Debt (the "Series [] Debt"), of the Company upon payment therefor in cash at the rate initially of [spell out exercise price][insert numerical number] per Debt Portion of such Series [] Debt (the "Exercise Price"), subject to the adjustments, terms and conditions herein and in the Warrant Agreement between the Company and [insert name of Warrant Agent], as Warrant Agent, dated as of _____, 200_ (as the same may from time to time be amended, the "Warrant Agreement"). If at any time no other Warrant Agent is acting for the Company, the Company shall be deemed the Warrant Agent. The Series [] Debt is issuable by the Company pursuant to a Senior Note Indenture, dated as of _____, 200_, by and between the Company and _____, as Trustee (as the same may from time to time be amended, the "Indenture"). A total of \$_____ of principal amount of Series [] Debt has been authorized for issuance under the Indenture.

This Warrant Certificate is issued pursuant to the terms and provisions of the Warrant Agreement and each holder of a Warrant is entitled to the benefits thereof. The Warrant Agreement provides, among other things, for adjustment of the Exercise Price and of the Debt Portion of the Series [] Debt issuable upon exercise of this Warrant Certificate in certain events, including the issuance of Series [] Debt as a stock dividend; sub-divisions, combinations and reclassifications of the Series [] Debt; the distribution to all holders of Series [] Debt of

evidences of indebtedness, assets or rights to subscribe to any of the foregoing; and certain mergers, consolidations and sales of substantially all the assets of the Company. Upon each such adjustment, notice thereof will be given by filing a statement thereof with the Warrant Agent and by mailing a copy of such notice to all registered holders of Warrant Certificates.

No denominations of Series [] Debt less than the initial amount of the Debt Portion will be issued upon the exercise of a Warrant; instead, the Warrant holder will be entitled to receive cash for such lesser denomination in an amount equal to the principal amount thereof.

Each Warrant represented hereby may be exercised by the presentment and delivery of the following to the Warrant Agent at its Principal Office:

- (a) presentation and surrender of this Warrant Certificate with the Form of Exercise attached hereto duly completed and executed by the holder in whose name this Warrant Certificate is registered.
- (b) delivery of proof reasonably satisfactory to the Warrant Agent as to the identity of the registered holder of this Warrant Certificate and as to the genuineness and effectiveness of the signature of the registered holder.
- (c) delivery of proof reasonably satisfactory to the Warrant Agent as to the genuineness and effectiveness of the signature of the registered holder, including a guarantee of the genuineness of the signature of the registered holder by a bank or by brokerage firm.
- (d) payment of the Exercise Price for the number of Warrants being exercised which may be by cash or by certified or official bank check or bank draft or money order payable to the order of the Company.
- (e) if the Warrants or the Series [] Debt issuable upon the exercise of the Warrants are being transferred to a person other than the registered holder, a duly completed and executed Form of Assignment attached hereto or a separate instrument of transfer duly completed and executed by the registered holder with signature of the registered holder "guaranteed" as described in paragraph (c) above.
- (f) In the event that the number of Warrants so exercised is less than the total number of Warrants evidenced by this Warrant Certificate, there will be issued to the person so exercising the Warrants, or his registered assigns, a new Warrant Certificate representing the number of Warrants not exercised.

In the event of the liquidation, dissolution or winding-up of the Company, in cases where the property to be distributed to the holders of Series [] Debt of the Company consists principally of other than securities of another entity which shall have purchased all or substantially all of the Company's assets, the right to exercise Warrants shall terminate at the close of business on the fourth full business day before the earliest date fixed for the payment of any amount distributable on the Series [] Debt of the Company; provided that, at least 45 days prior thereto, notice of such payment date shall have been given by the Warrant Agent in writing to all registered holders of Warrant Certificates. Warrants shall terminate and shall be of no further force and effect at such close of business on such fourth full business day.

Holders of Warrant Certificates, as such holders, shall have none of the rights that inure to the holder of Series [] Debt, shall have no right, other than the right evidenced hereby, to purchase or receive Series [] Debt of the Company, shall not be entitled to subscribe to or purchase any additional debt or increased stock of the Company of any class, whether now or hereafter authorized, or obligations convertible into any other series of debt, class or classes of stock, or debt or stock of any class convertible into debt or stock of any other class or classes, or debt,

FORM OF EXERCISE

The undersigned hereby irrevocably exercises ____ Warrants to subscribe for and purchase the Debt Portion of the Series [] Debt of the within named Company evidenced by this Warrant Certificate and herewith makes payment of the Exercise Price in full. Kindly issue certificates for Debt Portion of such Series [] Debt in accordance with the instructions given below. A Warrant Certificate for the unexercised balance of the Warrants evidenced by the within Warrants Certificate, if any, will be registered in the name of the undersigned.

DATED: _____

Instructions for Registration of Series [] Debt

Name (please print)

Social Security or Other identifying Number;

ADDRESS:

Street

City, State and Zip Code

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____, as Attorney-in-Fact, with full power and authority in the name, place and stead of the registered holder of this Warrant Certificate to transfer the within Warrant Certificate on the books of the within named Company, with full power of substitution.

Dated:

Signature of Registered Holder
(Signature must conform in all respects to name of the holder as specified on the face of this Warrant certificate)

Social Security or Tax I.D. No. of Holder

**Form of Warrant Certificate
For Series [] Subordinated Debt**

MATRIX SERVICE COMPANY

SERIES [] WARRANTS

WARRANT CERTIFICATE TO ACQUIRE SERIES [] SUBORDINATED DEBT OF
MATRIX SERVICE COMPANY

**Void After 4:00 P.M. New York City, New York Time
on _____ (the "Expiration Date")**

REGISTERED NUMBER: _____

CUSIP: _____

THIS WARRANT IS PART OF A UNIT
AND MAY NOT BE TRADED SEPARATELY
UNTIL THE SEPARATION DATE: Yes No

THE SEPARATION DATE IS: _____

THE SERIES [] SUBORDINATED DEBT PURCHASABLE UPON THE EXERCISE OF THIS WARRANT IS SUBORDINATED TO THE OBLIGATIONS (INCLUDING INTEREST) OWED BY THE COMPANY TO ALL SENIOR DEBT; AND EACH HOLDER HEREOF UPON THE EXERCISE OF THIS WARRANT SHALL, BY ITS ACCEPTANCE OF SUCH SERIES [] DEBT, BE BOUND BY THE PROVISIONS OF THE SUBORDINATION SET FORTH IN THE INDENTURE REFERRED TO BELOW.

THIS CERTIFIES THAT

is the registered holder of [spell out number] (insert numerical number) Series [] Warrants (the "Warrants") of MATRIX SERVICE COMPANY, a Delaware corporation (the "Company"). Each Warrant entitles the holder thereof the right to purchase at any time after [insert Exercise Date] (the "Exercise Date") and on or before 4:00 P.M. New York City, New York time on [insert Expiration Date] (the "Expiration Date"), \$_____ of the principal amount (the "Debt Portion") of the Series [] Subordinated Debt (the "Series [] Subordinated Debt"), of the Company upon payment therefor in cash at the rate initially of [spell out exercise price][insert numerical number] per Debt Portion of such Series [] Subordinated Debt (the "Exercise Price"), subject to the adjustments, terms and conditions herein and in the Warrant Agreement between the Company and [insert name of Warrant Agent], as Warrant Agent, dated as of _____, 200_ (as the same may from time to time be amended, the "Warrant Agreement"). If at any time no other Warrant Agent is acting for the Company, the Company shall be deemed the Warrant Agent. The Series [] Subordinated Debt is issuable by the Company pursuant to a Senior Note Indenture, dated as of _____, 200_, by and between the Company and _____, as Trustee (as the same may from time to time be amended, the "Indenture"). A total of \$_____ of principal amount of Series [] Subordinated Debt has been authorized for issuance under the Indenture.

This Warrant Certificate is issued pursuant to the terms and provisions of the Warrant Agreement and each holder of a Warrant is entitled to the benefits thereof. The Warrant Agreement provides, among other things, for adjustment of the Exercise Price and of the Debt Portion of the Series [] Subordinated Debt issuable upon exercise of this Warrant Certificate in certain events, including the issuance of Series [] Subordinated Debt as a stock dividend; sub-divisions, combinations and reclassifications of the Series [] Subordinated Debt; the distribution to all holders of Series [] Subordinated Debt of evidences of indebtedness, assets or rights to subscribe to any of the foregoing; and certain mergers, consolidations and sales of substantially all the assets of the Company. Upon each such adjustment, notice thereof will be given by filing a statement thereof with the Warrant Agent and by mailing a copy of such notice to all registered holders of Warrant Certificates.

No denominations of Series [] Subordinated Debt less than the initial amount of the Debt Portion will be issued upon the exercise of a Warrant; instead, the Warrant holder will, subject to any limitations contained in the Indenture, including the subordination provisions of the Indenture, be entitled to receive cash for such lesser denomination in an amount equal to the principal amount thereof.

The Series [] Subordinated Debt issuable to a holder of this Warrant upon the exercise hereof is, to the extent and in the manner provided in the Indenture, subordinate and junior in right of payment to the prior payment in full in cash (or as otherwise agreed) of all Senior Debt of the Company. Any holder by accepting such Series [] Subordinated Debt agrees to and shall be bound by such subordination provisions and authorizes the Trustee under the Indenture to give them effect and appoints the Trustee its attorney-in-fact for such purposes. In addition to all other rights of Senior Debt described in the Indenture, the Senior Debt shall continue to be Senior Debt and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any terms of any instrument relating to the Senior Debt or any extension or renewal of the Senior Debt or increase in the amount thereof.

Each Warrant represented hereby may be exercised by the presentment and delivery of the following to the Warrant Agent at its Principal Office:

- (a) presentation and surrender of this Warrant Certificate with the Form of Exercise attached hereto duly completed and executed by the holder in whose name this Warrant Certificate is registered.
- (b) delivery of proof reasonably satisfactory to the Warrant Agent as to the identity of the registered holder of this Warrant Certificate and as to the genuineness and effectiveness of the signature of the registered holder.
- (c) delivery of proof reasonably satisfactory to the Warrant Agent as to the genuineness and effectiveness of the signature of the registered holder, including a guarantee of the genuineness of the signature of the registered holder by a bank or by brokerage firm.
- (d) payment of the Exercise Price for the number of Warrants being exercised which may be by cash or by certified or official bank check or bank draft or money order payable to the order of the Company.
- (e) if the Warrants or the Series [] Subordinated Debt issuable upon the exercise of the Warrants are being transferred to a person other than the registered holder, a duly completed and executed Form of Assignment attached hereto or a separate instrument of transfer duly completed and executed by the registered holder with signature of the registered holder "guaranteed" as described in paragraph (c) above.
- (f) In the event that the number of Warrants so exercised is less than the total number of Warrants evidenced by this Warrant Certificate, there will be issued to the person so exercising the Warrants, or his registered assigns, a new Warrant Certificate representing the number of Warrants not exercised.

In the event of the liquidation, dissolution or winding-up of the Company, in cases where the property to be distributed to the holders of Series [] Subordinated Debt of the Company consists principally of other than securities of another entity which shall have purchased all or substantially all of the Company's assets, the right to exercise Warrants shall terminate at the close of business on the fourth full business day before the earliest date fixed for the payment of any amount distributable on the Series [] Subordinated Debt of the Company; provided that, at least 45 days prior thereto, notice of such payment date shall have been given by the Warrant Agent in writing to all registered holders of Warrant Certificates. Warrants shall terminate and shall be of no further force and effect at such close of business on such fourth full business day.

Holders of Warrant Certificates, as such holders, shall have none of the rights that inure to the holder of Series [] Subordinated Debt, shall have no right, other than the right evidenced hereby, to purchase or receive Series [] Subordinated Debt of the Company, shall not be entitled to subscribe to or purchase any additional debt or increased stock of the Company of any class, whether now or hereafter authorized, or obligations convertible into any other series of debt, class or classes of stock, or debt or stock of any class convertible into debt or stock of any other class or classes, or debt, stock or other securities carrying warrants or rights to subscribe to debt or stock of the Company of any class or classes, whether now or hereafter authorized.

This Warrant Certificate is transferable by the registered holder in person or by his duly authorized attorney on the books of the Company at the office of the Warrant Agent upon surrender of this Certificate with the Form of Assignment attached hereto duly endorsed or with other appropriate instruments of transfer duly endorsed with signature guaranteed and payment of any transfer taxes or other governmental charges in connection with such transfer.

This Warrant Certificate is exchangeable for Warrant Certificates of different authorized denominations at the Principal Office of the Warrant Agent upon surrender of this Warrant Certificate, duly endorsed or with appropriate instruments of transfer. Warrant Certificates issued upon transfers and exchanges shall be issued only for full Warrants or an integral multiple thereof. Warrant Certificates that are surrendered to the Warrant Agent for transfer shall be canceled.

Unless sooner terminated as provided herein upon exercise or upon liquidation, dissolution or winding-up of the Company, the purchase rights under the Warrants shall terminate on the Expiration Date and thereafter the Warrants represented by this Certificate shall be of no further force and effect.

THIS WARRANT CERTIFICATE IS NOT VALID UNLESS COUNTERSIGNED BY THE WARRANT AGENT.

IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be duly executed by the facsimile signature of the proper officers of the Company.

Dated: _____

MATRIX SERVICE COMPANY

By: _____, President

By: _____, Secretary

Countersigned and Registered:

[NAME OF WARRANT AGENT]

By: _____
Authorized Officer

FORM OF EXERCISE

The undersigned hereby irrevocably exercises ____ Warrants to subscribe for and purchase the Debt Portion of the Series [] Subordinated Debt of the within named Company evidenced by this Warrant Certificate and herewith makes payment of the Exercise Price in full. Kindly issue certificates for Debt Portion of such Series [] Subordinated Debt in accordance with the instructions given below. A Warrant Certificate for the unexercised balance of the Warrants evidenced by the within Warrants Certificate, if any, will be registered in the name of the undersigned.

DATED: _____

Instructions for Registration of Series [] Subordinated Debt

Name (please print)

Social Security or Other identifying Number;

ADDRESS:

Street

City, State and Zip Code

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____, as Attorney-in-Fact, with full power and authority in the name, place and stead of the registered holder of this Warrant Certificate to transfer the within Warrant Certificate on the books of the within named Company, with full power of substitution.

Dated:

Signature of Registered Holder
(Signature must conform in all respects to name of the holder as specified on the face of this Warrant certificate)

Social Security or Tax I.D. No. of Holder

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
320 SOUTH BOSTON AVENUE
SUITE 400
TULSA, OKLAHOMA 74103
TELEPHONE (918) 594-0400
FAX (918) 594-0505

October 11, 2004

Matrix Service Company
10701 East Ute Street
Tulsa, OK 74116

Ladies and Gentlemen:

We have acted as counsel for Matrix Service Company, a Delaware corporation (the "Company"), in connection with the registration by the Company under the Securities Act of 1933, as amended (the "Securities Act"), of the offer and sale by the Company from time to time of (i) unsecured debt securities of the Company, which may be either senior or subordinated debt issued in one or more series and evidenced by notes (the "Debt Securities"), (ii) shares of preferred stock, \$.01 par value, of the Company, to be issued in one or more series (the "Preferred Stock"), (iii) shares of common stock, \$.01 par value, of the Company (the "Common Stock") and (iv) warrants (the "Warrants") and, together with the Debt Securities, the Preferred Stock and the Common Stock, the "Securities") for the purchase of Common Stock, Preferred Stock and Debt Securities.

The Securities will be offered and sold from time to time by the Company pursuant to a Registration Statement on Form S-3, File Number 333-117077 (as the same may be amended, the "Registration Statement"), to which this opinion is an exhibit. The Securities will be offered on a delayed or continuous basis pursuant to Rule 415 of the rules and regulations promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act in amounts, at prices and on terms to be determined in light of market conditions prevailing at the time of sale and to be set forth in supplements to the Prospectus (each a "Prospectus Supplement") contained in the Registration Statement. The aggregate initial offering prices of the Securities to be offered and sold by the Company will not exceed \$125,000,000.

In rendering this opinion, we reviewed such matters of fact and questions of law as we have deemed necessary and appropriate and have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Articles of Incorporation and Bylaws of the Company, each as amended to the date hereof, (ii) the Registration Statement, (iii) the form of Senior Note Indenture (the "Senior Indenture"), (iv) the form of Subordinated Note Indenture (the "Subordinated Indenture") and, together with the Senior Indenture, the "Indentures"), (v) the form of Warrant Agreement ("Warrant Agreement") pursuant to which the Warrants will be issued and (vi) such other certificates, statutes and other instruments and documents as we considered appropriate for purposes of the opinions hereafter expressed.

With regard to the opinions set forth below, we have assumed that (i) all information contained in all documents reviewed by us is true and correct; (ii) all signatures on all documents examined by us are genuine; (iii) all documents submitted to us as originals are authentic and all documents submitted to us as copies conform to the originals of those documents; (iv) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective under the Securities Act; (v) a Prospectus Supplement will have been prepared and filed with the Commission in accordance with the Securities Act and the rules and regulations thereunder describing the terms and provisions of the Securities offered thereby and the terms and conditions relating to the offer and sale thereof; (vi) all Securities will be issued and sold in compliance with applicable federal and state securities laws; (vii) the Securities have been issued and sold as contemplated by the Registration

Statement and any Prospectus Supplement thereto; (viii) the Company has received the consideration for the Securities as contemplated by the Registration Statement and any Prospectus Supplement thereto; and (ix) all Securities issuable upon conversion, exchange or exercise of any Debt Securities, Preferred Stock or Warrants sold will, at the time of sale, have been duly authorized, and reserved for issuance upon such conversion, exchange or exercise.

Based on the foregoing, and subject to the assumptions, qualifications, limitations, and exceptions set forth herein, we are of the opinion that:

1. With respect to the Common Stock, when (i) specifically authorized for issuance by the Company's Board of Directors or an authorized committee thereof, (ii) the terms of the sale of the Common Stock have been duly established in conformity with the Company's Articles of Incorporation and Bylaws and assuming such terms and sale do not violate any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, (iii) the Common Stock has been issued and sold as contemplated by the Registration Statement and any applicable Prospectus Supplement, and (iv) the Company has received the consideration provided for in the authorizing resolutions and such consideration per share is not less than the par value per share of the Common Stock, the Common Stock will be validly issued, fully paid and non-assessable.
2. With respect to the Preferred Stock, when (i) specifically authorized for issuance by the Company's Board of Directors or an authorized committee thereof, (ii) appropriate Statement(s) of Designation relating to a class or series of the Preferred Stock to be sold under the Registration Statement have been duly authorized and adopted and filed and become effective with the Secretary of State of the State of Delaware, (iii) the terms of issuance and sale of shares of such class or series of Preferred Stock have been duly established in conformity with the Company's Articles of Incorporation and Bylaws and assuming such terms and sale do not violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, (iv) shares of such class or series of Preferred Stock have been duly issued and sold as contemplated by the Registration Statement and any applicable Prospectus Supplement, and (v) the Company has received the consideration provided for in the authorizing resolutions and such consideration per share is not less than the par value per share of the Preferred Stock, such Preferred Stock will be validly issued, fully paid, and non-assessable.
3. With respect to the Debt Securities, when (a) the applicable Indenture relating either to senior Debt Securities or subordinated Debt Securities have been duly qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), (b) a trustee will have been duly appointed, authorized and qualified in accordance with the 1939 Act and the rules and regulations promulgated thereunder and any related Statement of Eligibility on Form T-1 will have been duly filed and become effective in accordance with the 1939 Act and the rules and regulations promulgated thereunder (c) the board of directors of the Company has taken all necessary corporate action to approve the issuance and terms of any such Debt Securities, (d) the terms of such Debt Securities have been duly established in conformity with the applicable Indenture so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental body having jurisdiction over the Company, (e) any shares of Common Stock or other securities of the Company issuable upon the conversion of such Debt Securities, if applicable, have been duly and validly authorized for issuance and (f) such Debt Securities have been duly executed and authenticated in accordance with the applicable Indenture and issued and sold as contemplated in the Registration Statement and the Prospectus Supplement relating to the issuance and sale of such Debt Securities, such Debt Securities will be legally issued and will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with its terms, except as such enforcement is subject to any applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium and similar laws relating to or affecting

creditors' rights generally and to general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. With respect to the Warrants, when (a) the terms of any series of Warrants and of their issuance and sale have been duly established in conformity with the Warrant Agreement so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirements or restrictions imposed by any court or governmental body having jurisdiction over the Company, and (b) the Warrant Certificates evidencing the Warrants have been duly executed and authenticated in accordance with the Warrant Agreement and issued and sold as contemplated in the Registration Statement and the Prospectus Supplement relating to the issuance and sale of such Debt Securities, the Warrants will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and to general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

We express no opinions concerning (a) the validity or enforceability of any provisions contained in the 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 (b) the enforceability of indemnification provisions to the extent they purport to relate to liabilities resulting from or based upon negligence or any violation of federal or state securities or blue sky laws.

The foregoing opinions are limited to the laws of the States of New York and Delaware and the federal laws of the United States of America and we are expressing no opinion as to the effect of the laws of any other jurisdiction, domestic or foreign.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the Prospectus forming a part of the Registration Statement under the caption "Legal Matters."

/s/ Hall, Estill, Hardwick, Gable, Golden & Nelson

Matrix Service Company
Ratio of Earnings to Fixed Charges
(In Thousands except ratios)

	Three Months Ended August 31, 2004	2004	2003	2002	2001	2000
Ratio of Earnings to Fixed Charges	*	5.78	9.31	9.89	10.02	10.38
Fixed Charges:						
Interest Expensed	901	2,699	990	255	407	368
Interest Capitalized	—	—	274	364	4	—
Amortized premiums, discounts and capitalized expenses related to indebtedness	97	212	57	31	26	21
Estimated interest within rental expense	96	425	452	377	345	378
Total	1,094	3,336	1,773	1,027	782	767
Earnings:						
Pre-tax income (loss) from continuing operations	(1,503)	16,070	12,890	9,488	7,060	7,196
Less: Equity Earnings	—	(857)	(644)	—	—	—
Plus: Fixed Charges	1,094	3,336	1,773	1,027	782	767
Plus: Amortization of Capitalized Interest	5	19	9	1	—	—
Plus: Distributed Earnings of Equity Investees	—	701	2,749	—	—	—
Less: Interest Capitalized	—	—	(274)	(364)	(4)	—
Total	(404)	19,269	16,503	10,152	7,838	7,963

* Earnings were inadequate to cover fixed charges by \$1,498 for the three months ended August 31, 2004.

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in Amendment No. 1 to the Registration Statement (Form S-3 No. 333-117077) and related Prospectus of Matrix Service Company for the registration of up to \$125,000,000 of common stock, preferred stock, debt securities or warrants and to the incorporation by reference therein of our report dated August 10, 2004, with respect to the consolidated financial statements and schedule of Matrix Service Company included in its Annual Report (Form 10-K) for the year ended May 31, 2004, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

October 8, 2004