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

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

EASTMAN KODAK COMPANY

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

16-0413150
(I.R.S. Employer
Identification Number)

**343 State Street
Rochester, NY 14650
(585) 724-4000**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Sharon E. Underberg
General Counsel, Secretary and Senior Vice President
343 State Street
Rochester, NY 14650
(585) 724-4000**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With a copy to:

**Andrew L. Fabens
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166-0193
(212) 351-4000**

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

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

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per unit	Proposed maximum aggregate offering price (2)(1)	Amount of registration fee (3)
Primary Offering:				
Common Stock	(4)	(2)	\$841,226,486.52	\$84,711.51
Preferred Stock				
Debt Securities				
Warrants				
Depositary Shares				
Purchase Contracts				
Guarantees (5)				
Units (6)				
Secondary Offering by Selling Shareholders:				
Common Stock	21,586,854	\$16.62(1)	\$358,773,513.48	\$36,128.49
Total			\$1,200,000,000	\$120,840.00

- (1) The price is estimated in accordance with Rule 457(c) under the Securities Act, solely for the purpose of determining the registration fee, based upon the average of the high and low prices of the registrant’s common stock reported on the New York Stock Exchange on August 3, 2016.
- (2) The proposed maximum offering price per unit (a) has been omitted pursuant to Instruction II.D. of Form S-3, and (b) will be determined, from time to time, by the registrant in connection with the issuance of the securities registered hereunder.
- (3) Calculated pursuant to Rule 457(o) of the rules and regulations under the Securities Act of 1933, as amended.
- (4) There is being registered hereunder an indeterminate number of shares of common stock, preferred stock, debt securities, warrants, depositary shares and purchase contracts as may be sold, from time to time, by the registrant. There is also being registered hereunder an indeterminate number of shares of common stock that may be issued upon conversion of preferred stock or debt securities or exercise of warrants registered hereunder and an indeterminate number of shares of preferred stock and debt securities that may be issued upon exercise of warrants hereunder.
- (5) No separate consideration will be received for any guarantee of debt securities. Accordingly, pursuant to Rule 457(n) of the Securities Act of 1933, as amended, no separate filing fee is required.
- (6) Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.

The information in this prospectus is not complete and may be changed. Neither we nor the selling shareholders may 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 neither we nor the selling shareholders are soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated August 9, 2016

PROSPECTUS

EASTMAN KODAK COMPANY

**\$1,200,000,000 OF
COMMON STOCK
PREFERRED STOCK
DEBT SECURITIES
DEPOSITARY SHARES
WARRANTS
PURCHASE CONTRACTS
GUARANTEES
UNITS**

This prospectus relates to the offer and sale of our securities from time to time in one or more offerings of up to \$1,200,000,000 in aggregate offering price. These securities include up to 21,586,854 shares of our common stock that selling shareholders may from time to time offer and sell. We will not receive any of the proceeds from the sale of our common stock by the selling shareholders. This prospectus provides a general description of the common stock, preferred stock, debt securities, warrants, depositary shares, purchase contracts, guarantees and units that may be offered and sold from time to time. Each time we offer securities pursuant to this prospectus, and in certain cases where one or more selling shareholders offer securities pursuant to this prospectus, we or the selling shareholders, as applicable, will provide a prospectus supplement and attach it to this prospectus. Such a prospectus supplement will contain more specific information about the offering. A prospectus supplement may also add, update or change information contained in this prospectus. You should carefully read this prospectus and any accompanying prospectus supplement, together with the documents we incorporate by reference, before you invest in our securities.

Our common stock is listed on the New York Stock Exchange under the symbol "KODK". On August 8, 2016, the last reported sale price of our common stock on the New York Stock Exchange was \$16.78.

Investing in our securities involves risks. You should read carefully and consider the risks referenced under "[Risk Factors](#)" beginning on page 6 of this prospectus, as well as the other information contained in or incorporated by reference in this prospectus or in any accompanying prospectus supplement before making a decision to invest in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

We or the selling shareholders may sell these securities on a continuous or delayed basis directly, through agents, dealers or underwriters as designated from time to time, or through a combination of these methods. We or the selling shareholders reserve the sole right to accept, and together with any agents, dealers and underwriters, reserve the right to reject, in whole or in part, any proposed purchase of securities. If any agents, dealers or underwriters are involved in the sale of any securities, the applicable prospectus supplement will set forth any applicable commissions or discounts. Our net proceeds from the sale of securities also will be set forth in any applicable prospectus supplement.

Prospectus dated _____, 2016.

TABLE OF CONTENTS

	<u>Page</u>
ABOUT THIS PROSPECTUS	1
WHERE YOU CAN FIND MORE INFORMATION	2
INCORPORATION OF CERTAIN INFORMATION BY REFERENCE	2
CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS	4
THE COMPANY	5
RISK FACTORS	6
RATIO OF EARNINGS TO FIXED CHARGES	7
USE OF PROCEEDS	8
SELLING SHAREHOLDERS	9
DESCRIPTION OF CAPITAL STOCK	12
DESCRIPTION OF THE DEBT SECURITIES	15
DESCRIPTION OF OTHER SECURITIES	23
PLAN OF DISTRIBUTION	24
LEGAL MATTERS	27
EXPERTS	27

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) using a “shelf” registration process. We may sell any combination of the securities described in this prospectus from time to time.

The types of securities that we may offer and sell from time to time by this prospectus are:

- common stock;
- preferred stock;
- debt securities, which may be senior or subordinated and secured or unsecured and which may include guarantees of the debt securities by some or all of our subsidiaries;
- warrants entitling the holders to purchase common stock, preferred stock or debt securities;
- depositary shares;
- purchase contracts;
- guarantees; and
- units.

We may sell these securities either separately or in units. We may issue debt securities convertible into shares of our common stock or preferred stock. The preferred stock also may be convertible into shares of our common stock or another series of preferred stock. In addition to the primary offering of securities, the selling shareholders may from time to time sell up to 21,586,854 shares of our common stock described in this prospectus in one or more secondary offerings. This prospectus provides a general description of the securities that may be offered. Each time we offer securities, and in certain cases where one or more selling shareholders offer securities, we or the selling shareholders, as applicable, will provide a supplement to this prospectus that contains specific information about the offering and the specific terms of the securities offered. That prospectus supplement may include a discussion of any risk factors or other special considerations applicable to those securities. In each prospectus supplement we will include the following information:

- the type and amount of securities that we or the selling shareholders propose to sell;
- the initial public offering price of the securities (in the case of an underwritten offering);
- the names of any underwriters or agents through or to which we will sell the securities, if applicable;
- any compensation of those underwriters or agents, if applicable; and
- information about any securities exchanges or automated quotation systems on which the securities will be listed or traded.

In addition, any accompanying prospectus supplement also may add, update or change the information contained in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement. You should read both this prospectus and any prospectus supplement together with the additional information described under the headings “Where You Can Find More Information” and “Incorporation of Certain Information by Reference.”

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in or incorporated by reference into this prospectus or any accompanying prospectus supplement. You must not rely on any unauthorized information or representations. This prospectus or any accompanying prospectus supplement does not offer to sell or ask for offers to buy any securities other than those to which it relates and it does not constitute an offer to sell or ask for offers to buy any of the securities in any jurisdiction where it is unlawful, where the person making the offer is not qualified to do so, or to any person who cannot legally be offered the securities. The information contained in this prospectus, any accompanying prospectus supplement or any document incorporated by reference herein or therein is current only as of its date. Our business, financial condition, results of operations and prospects may have changed since those dates.

Table of Contents

In this prospectus, except as otherwise indicated or as the context otherwise requires, “EKC” refers to Eastman Kodak Company on an unconsolidated basis and the words “Kodak,” “we,” “us,” “our,” the “Company” and “ours” refer to Eastman Kodak Company and its consolidated subsidiaries.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC, and we have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933, as amended (the “Securities Act”), with respect to the securities offered by this prospectus. This prospectus, which forms part of the registration statement, does not contain all of the information included in the registration statement, including its exhibits and schedules. For further information about us and the securities described in this prospectus, you should refer to the registration statement, its exhibits and schedules and our reports, proxy statements, information statements and other information filed with the SEC. You may read and copy these materials at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the Public Reference Section of the SEC at prescribed rates. You can obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an internet site at www.sec.gov, from which you can electronically access these materials.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information into this prospectus. This means that we can disclose important information about us and our financial condition to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this prospectus, except any information that is superseded by information that is included in a document subsequently filed with the SEC.

This prospectus incorporates by reference the documents listed below that we have previously filed with the SEC and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), from the date of this prospectus until the termination of an offering of securities, except that we are not incorporating by reference any information furnished (and not filed) with the SEC, including our Compensation Committee report and performance graph or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K:

- our Annual Report on Form 10-K for the year ended December 31, 2015 as amended, including the portions of our Proxy Statement for our 2016 annual meeting of shareholders incorporated by reference therein, but excluding Part I, Item 1; Part II, Item 6; Part II, Item 7; Part II, Item 8; Part IV, Item 15 and Exhibit 12.1 to such Annual Report to the extent superseded by our Current Report on Form 8-K filed on August 9, 2016;
- our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2016 and June 30, 2016;
- our Current Reports on Form 8-K filed on May 26, 2016, May 27, 2016, June 15, 2016 and August 9, 2016; and
- the description of our common stock contained in our Registration Statement on Form 8-A filed on September 3, 2013, including the description of our common stock contained in our Registration Statement on Form S-8 filed on September 3, 2013 and incorporated by reference therein, and any amendments or reports filed for the purpose of updating that description.

Any statement contained in a document all or a portion of which is incorporated or deemed to be incorporated by reference herein will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified will not be deemed to constitute a part hereof, except as so modified, and any statement so superseded will not be deemed to constitute a part hereof.

A copy of any document incorporated by reference in this prospectus may be obtained at no cost by writing or telephoning us at the following address and telephone number:

Eastman Kodak Company
343 State Street
Rochester, NY 14650

[Table of Contents](#)

Attention: Sharon E. Underberg
Phone: (585) 724-4000

We maintain a website at www.Kodak.com. Information about us, including our reports filed with the SEC, is available through that site. Such reports are accessible at no charge through our website and are made available as soon as reasonably practicable after such material is filed with or furnished to the SEC. Our website and the information contained on that website, or connected to that website, are not incorporated by reference in this prospectus.

You may read and copy any materials we file with the SEC at the SEC's website or at the SEC's offices mentioned under the heading "Where You Can Find More Information." The information on the SEC's website is not incorporated by reference in this prospectus.

CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference include “forward-looking statements” as that term is defined under the Private Securities Litigation Reform Act of 1995.

Forward-looking statements include statements concerning Kodak’s plans, objectives, goals, strategies, future events, future revenue or performance, capital expenditures, liquidity, investments, financing needs and business trends, and other information that is not historical information. When used in this document, the words “estimates,” “expects,” “anticipates,” “projects,” “plans,” “intends,” “believes,” “predicts,” “forecasts,” “strategy,” “continues,” “goals,” “targets” or future or conditional verbs, such as “will,” “should,” “could,” or “may,” and similar expressions, as well as statements that do not relate strictly to historical or current facts, are intended to identify forward-looking statements. All forward-looking statements, including, management’s examination of historical operating trends and data, are based upon Kodak’s expectations and various assumptions. Future events or results may differ from those anticipated or expressed in these forward-looking statements. Important factors that could cause actual events or results to differ materially from these forward-looking statements include, among others, the risks and uncertainties described in more detail in this prospectus, in our Annual Report on Form 10-K for the year ended December 31, 2015, as amended, under the headings “Risk Factors” and “Legal Proceedings,” in our Current Report on Form 8-K under the headings “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources,” and in the corresponding sections of our quarterly reports on Form 10-Q for the quarters ended March 31, 2016 and June 30, 2016, and in other filings Kodak makes with the SEC from time to time, as well as the following:

- Kodak’s ability to comply with the covenants in its credit agreements;
- Kodak’s ability to improve and sustain its operating structure, cash flow, profitability and other financial results;
- the ability of Kodak to achieve cash forecasts, financial projections, and projected growth;
- Kodak’s ability to achieve the financial and operational results contained in its business plans;
- Kodak’s ability to fund continued investments, capital needs and restructuring payments and service its debt;
- Kodak’s ability to discontinue, sell or spin-off certain businesses or operations, including the Prosper Business, or otherwise monetize assets;
- changes in foreign currency exchange rates, commodity prices and interest rates;
- Kodak’s ability to effectively anticipate technology trends and develop and market new products, solutions and technologies, including its micro 3D printing of touch sensors;
- Kodak’s ability to effectively compete with large, well-financed industry participants;
- continued sufficient availability of borrowings and letters of credit under Kodak’s credit facility, Kodak’s ability to obtain additional financing if and as needed and Kodak’s ability to provide or facilitate financing for its customers;
- Kodak’s ability to attract and retain key executives, managers and employees;
- the performance by third parties of their obligations to supply products, components or services to Kodak; and
- the impact of the global economic environment on Kodak.

There may be other factors that may cause Kodak’s actual results to differ materially from the forward-looking statements. All forward-looking statements attributable to Kodak or persons acting on its behalf apply only as of the date of this prospectus or, with respect to any forward-looking statements included in a document incorporated by reference, as of the date thereof and are expressly qualified in their entirety by the cautionary statements included or referenced in this prospectus. Kodak undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events.

THE COMPANY

General

Kodak provides directly and through partnerships with other innovative companies hardware, software, consumables and services to customers in graphic arts, commercial print, publishing, packaging, electronic displays, entertainment and commercial films, and consumer products markets. With its world-class R&D capabilities, innovative solutions portfolio and highly trusted brand, Kodak is helping customers around the globe to sustainably grow their own businesses and enjoy their lives.

Kodak is a global commercial printing and imaging company with proprietary technologies in materials science, digital imaging science and software, and deposition processes (methods whereby one or more layers of various materials in gaseous, liquid or small particle form are deposited on a substrate in precise quantities and positions). Kodak leverages its core technology products and services to develop solutions for the product goods packaging and graphic communications markets, and is commercializing products for the functional printing market. Kodak also offers brand licensing and intellectual property opportunities, provides products and services for motion pictures and other commercial films, and sells ink to its existing installed consumer inkjet printer base.

The Company was founded by George Eastman in 1880 and incorporated in 1901 in the State of New Jersey. Kodak is headquartered in Rochester, New York.

Corporate Information

Our principal executive office is located at 343 State Street, Rochester, New York 14650, and our telephone number is (585) 724-4000.

RISK FACTORS

Investing in our securities involves risks, including the risk factors described below with respect to our common stock. You should carefully consider these risks, as well as the risks, uncertainties and other factors described in our most recent Annual Report on Form 10-K, as supplemented and updated by subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K that we have filed or will file with the SEC, and in other documents which are incorporated by reference into this prospectus, as well as the risk factors and other information contained in or incorporated by reference into any accompanying prospectus supplement, before investing in any of our securities. Our financial condition, results of operations or cash flows could be materially adversely affected by any of these risks. The risks and uncertainties described in the documents incorporated by reference herein are not the only risks and uncertainties that we may face.

For more information about our SEC filings, please see “Where You Can Find More Information” and “Incorporation of Certain Information by Reference.”

Risks Related to our Common Stock

The selling shareholders own a large portion of our outstanding common stock. Sales of our common stock by these shareholders could result in a change of control of the Company and the loss of favorable tax attributes.

As of August 8, 2016, the selling shareholders beneficially owned 54.2% of our outstanding common stock. Although these shareholders consist of several unaffiliated groups, the selling shareholders collectively have a controlling influence over all matters presented to our shareholders for approval, including election of our directors and change of control transactions. In addition, the selling shareholders collectively would be able to cause a change of control of the Company by selling their shares of our common stock. If such a transaction were to result in an “ownership change,” as determined under Section 382 of the Internal Revenue Code of 1986, as amended, then our ability to offset taxable income with tax attributes generated prior to the ownership change date could be limited, possibly substantially. For more information on our tax attributes see note 14 to our consolidated financial statements, included within our annual reports on Form 10-K, as may be updated from time to time in future filings. The interests of the selling shareholders may not always coincide with the interests of the other holders of our common stock.

Future sales of our common stock, or the perception that these sales may occur, may adversely affect our stock price.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could cause the market price of our common stock to decline. For example, we are subject to a registration rights agreement with certain shareholders that acquired shares of our common stock in connection with our emergence from voluntary reorganization under Chapter 11 proceedings in September 2013. Pursuant to this agreement, we are registering these shares on the registration statement of which this prospectus forms a part and are required to maintain a registration statement covering the resale of these shares. In certain circumstances, these shareholders can require us to participate in an underwritten public offering of these shares. Any shares sold by these shareholders pursuant to these registration rights will be freely tradable without restriction under the Securities Act, except for shares purchased by our affiliates. While we cannot predict the size of future sales or distributions of our common stock, if there is a perception that such sales or distributions could occur, or if shareholders exercising their registration rights sell a large number of shares, the market price for our ordinary shares could be adversely affected.

RATIO OF EARNINGS TO FIXED CHARGES

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

	<u>Six Months Ended June 30,</u>	<u>Year Ended December 31,</u>		<u>Four Months Ended December 31,</u>	<u>Eight Months Ended August 31,</u>	<u>Year Ended December 31,</u>	
	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Ratio of earnings to fixed charges	1.6	1.0	N/A ⁽¹⁾	N/A ⁽¹⁾	21.4	N/A ⁽¹⁾	N/A ⁽¹⁾

(1) N/A—represents coverage ratio of less than 1. Our earnings were inadequate to cover fixed charges for 2011, 2012 and 2014 and for the four months ended December 31, 2013. The amounts by which earnings were inadequate to cover fixed charges were \$756 million in 2011, \$1,609 million in 2012, \$52 million in 2014 and \$55 million for the four months ended December 31, 2013.

For the periods indicated above, we have no outstanding shares of preferred stock with required dividend payments. Therefore, the ratios of earnings to combined fixed charges and preferred stock dividends are identical to the ratios presented in the table above.

USE OF PROCEEDS

Unless otherwise specified in a prospectus supplement accompanying this prospectus, the net proceeds from any sale by us of the securities to which this prospectus relates will be used for general corporate purposes, which may include repayment of debt, acquisitions, additions to working capital, capital expenditures and investments in our subsidiaries. Net proceeds may be temporarily invested prior to use. When we offer and sell securities to which this prospectus relates, the prospectus supplement related to such offering will set forth our intended use of the proceeds, if any, received from the sale of such securities.

Unless otherwise set forth in a prospectus supplement, we will not receive any proceeds from the sale, if any, of common stock by any selling shareholders.

SELLING SHAREHOLDERS

In addition to the primary offering of securities by us, this prospectus relates to the possible resale by the selling shareholders named below of up to 21,586,854 shares of our common stock, which includes 20,723,050 shares of common stock currently outstanding and 863,804 shares of common stock issuable upon the exercise of the Company’s 125% Warrants to purchase its common stock (the “125% warrants”) and its 135% Warrants to purchase its common stock (the “135% warrants” and together with the 125% warrants, the “warrants”), in each case subject to adjustments for stock splits, stock dividends and reclassifications, that were issued and outstanding prior to the original date of filing of the registration statement of which this prospectus forms a part.

The following table sets forth the names of the selling shareholders (and/or the beneficial owners) and the number of shares of common stock beneficially owned by each of them (which includes the number of shares of common stock issuable upon exercise of the warrants held by each of them) as of the date of this prospectus. The selling shareholders received shares of our common stock and the warrants, with registration rights, in connection with our emergence from voluntary reorganization under Chapter 11 proceedings in September 2013. These shares, including the shares underlying the warrants, are being registered in order to fulfill our contractual obligations under the registration rights agreement. The selling shareholders are the parties to a registration rights agreement with GSO Capital Partners LP, on behalf of various managed funds, BlueMountain Capital Management, LLC, on behalf of various managed funds, George Karfunkel, United Equities Commodities Company, Momar Corporation, Contrarian Capital Management, LLC, on behalf of Contrarian Funds, LLC, and Serengeti Asset Management LP, as investment advisor to various funds.

Information in the table below with respect to beneficial ownership has been furnished by each of the selling shareholders. Except as described above, there are currently no agreements, arrangements or understandings with respect to the sale of any of the shares. The shares, including the shares underlying the warrants, are being registered to permit public secondary trading of the shares, and selling shareholders may offer the shares for resale from time to time. Beneficial ownership reflected in the table below includes the total shares held by each selling shareholder and such selling shareholder’s affiliates. Beneficial ownership is determined in accordance with the rules and regulations of the SEC.

The selling shareholders listed in the table below may have sold, transferred, otherwise disposed of or purchased, or may sell, transfer, otherwise dispose of or purchase, at any time and from time to time, shares of our common stock in transactions exempt from the registration requirements of the Securities Act or in the open market after the date on which they provided the information set forth in the table below.

Information about additional selling shareholders, if any, including their identities and the common stock to be registered on their behalf, may be set forth in a prospectus supplement, in a post-effective amendment or in filings that we make with the SEC under the Exchange Act. Information concerning the selling shareholders may change from time to time. Any changes to the information provided below may be set forth in a supplement to this prospectus, in a post-effective amendment or in filings we make with the SEC under the Exchange Act.

Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each shareholder named in the following table possesses sole voting and investment power over the shares listed.

The selling shareholders named below and their permitted transferees, pledgees, donees or other successors may from time to time offer shares of common stock under this prospectus.

Name	Shares Beneficially Owned Prior to This Offering		Shares of Common Stock that May be Sold Hereby	Shares Beneficially Owned After This Offering+	
	Number	Percent(1)		Number	Percent(1)
GSO Capital Partners LP(2)	9,169,736	21.6%	8,782,569	387,167	*
BlueMountain Capital Management, LLC(3)	7,960,764	18.6%	6,625,058	1,335,706	3.1%
George Karfunkel(4)	1,413,924	3.5%	1,399,214	14,710	*
United Equities Commodities Company(5)(6)	1,641,272	3.9%	1,640,272	1,000	*
Momar Corporation(6)	3,139,741	7.4%	3,139,741	—	—

+ Assumes that the selling shareholders will sell all shares of their common stock that may be registered pursuant to this prospectus. There is no assurance that the selling shareholders will resell all or any of their common stock.

* Less than 1%

Table of Contents

- (1) Percentage of common stock is based on 42,247,470 shares of our common stock outstanding as of August 8, 2016. The calculation of this percentage assumes for each person the acquisition by such person of all shares that may be acquired upon exercise of warrants to purchase shares of common stock, and assumes that the other warrant holders do not exercise their warrants.
- (2) Consists of (i) 48,006 shares of common stock beneficially owned by FS Investment Corporation; (ii) 1,846 shares of common stock beneficially owned by FS Investment Corporation II; (iii) 284,637 shares of common stock beneficially owned by GSO Cactus Credit Opportunities Fund LP of which 171,471 shares of common stock and 5,884 shares of common stock underlying 125% warrants and 5,884 shares of common stock underlying 135% warrants are registerable hereunder; (iv) 285,769 shares of common stock beneficially owned by GSO Credit Alpha Trading (Cayman) LP; (v) 1,258,696 shares of common stock beneficially owned by GSO Credit-A Partners LP of which 1,226,470 shares of common stock and 16,113 shares of common stock underlying 125% warrants and 16,113 shares of common stock underlying 135% warrants are registerable hereunder; (vi) 1,011,918 shares of common stock beneficially owned by GSO Palmetto Opportunistic Investment Partners LP of which 986,236 shares of common stock and 12,841 shares of common stock underlying 125% warrants and 12,841 shares of common stock underlying 135% warrants are registerable hereunder; (vii) 6,265,011 shares of common stock beneficially owned by GSO Special Situations Master Fund LP of which 6,103,867 shares of common stock and 80,572 shares of common stock underlying 125% warrants and 80,572 shares of common stock underlying 135% warrants are registerable hereunder; and (viii) 13,853 shares of common stock beneficially owned by Locust Street Funding LLC. GSO Capital Partners LP serves as the investment manager or advisor of each of GSO Cactus Credit Opportunities Fund LP, GSO Credit Alpha Trading (Cayman) LP, GSO Credit-A Partners LP, GSO Palmetto Opportunistic Investment Partners LP and GSO Special Situations Master Fund LP (the “GSO Funds”). GSO Advisor Holdings L.L.C. is the special limited partner of GSO Capital Partners LP with investment and voting power over the securities beneficially owned by GSO Capital Partners LP. Blackstone Holdings I L.P. is the sole member of GSO Advisor Holdings L.L.C. Blackstone Holdings I/II GP Inc. is the general partner of each of Blackstone Holdings I L.P. and Blackstone Holdings II L.P. The Blackstone Group L.P. is the controlling shareholder of Blackstone Holdings I/II GP Inc. Blackstone Group Management L.L.C. is the general partner of The Blackstone Group L.P. Blackstone Group Management L.L.C. is wholly owned by Blackstone Group L.P.’s senior managing directors and controlled by its founder, Stephen A. Schwarzman. Each of Bennett J. Goodman and J. Albert Smith III serves as an executive of GSO Holdings I L.L.C. and GSO Capital Partners LP and may be deemed to have shared voting power and/or investment power with respect to the securities held by the GSO Funds. Each of Michael C. Forman, David J. Adelman, Gerald F. Stahlecker, Zachary Klehr and Sean Coleman may be deemed to have shared voting power and/or investment power with respect to the securities held by FS Investment Corporation, FS Investment Corporation II and Locust Street Funding LLC (collectively, the “FS Funds”). Each of the foregoing entities and individuals disclaims beneficial ownership of the shares of common stock held directly by the GSO Funds and the FS Funds (other than the GSO Funds and the FS Funds to the extent of their direct holdings). Jason New, senior managing director of Blackstone Group L.P., has been on the Company’s board of directors since 2013. The principal business address of each of GSO Special Situations Master Fund LP, GSO Credit-A Partners LP and GSO Credit Alpha Trading (Cayman) LP is c/o The Blackstone Group, 345 Park Avenue, New York, New York 10154. The principal business address of the FS Funds is 201 Rouse Boulevard, Philadelphia, Pennsylvania 19112.
- (3) Consists of (i) 2,660,255 shares of common stock beneficially owned by Blue Mountain Credit Alternatives Master Fund L.P. of which 2,454,917 shares of common stock and 102,669 shares of common stock underlying 125% warrants and 102,669 shares of common stock underlying 135% warrants are registerable hereunder; (ii) 289,178 shares of common stock beneficially owned by BlueMountain Timberline Ltd. of which 266,860 shares of common stock, 11,159 shares of common stock underlying 125% warrants and 11,159 shares of common stock underlying 135% warrants are registerable hereunder; (iii) 636,126 shares of common stock beneficially owned by BlueMountain Montenvers Master Fund SCA SICAV-SIF of which 556,262 shares of common stock, 39,932 shares of common stock underlying 125% warrants and 39,932 shares of common stock underlying 135% warrants are registerable hereunder; (iv) 314,414 shares of common stock beneficially owned by BlueMountain Distressed Master Fund L.P., of which 290,148 shares of common stock, 12,133 shares of common stock underlying 125% warrants and 12,133 shares of common stock underlying 135% warrants are registerable hereunder; (v) 170,244 shares of common stock beneficially owned by BlueMountain Guadalupe Peak Fund L.P. of which 157,104 shares of common stock, 6,570 shares of common stock underlying 125% warrants and 6,570 shares of common stock underlying 135% warrants are registerable hereunder; (vi) 235,554 shares of common stock beneficially owned by BlueMountain Strategic Credit Master Fund L.P. of which 217,374 shares of common stock,

Table of Contents

9,090 shares of common stock underlying 125% warrants and 9,090 shares of common stock underlying 135% warrants are registerable hereunder; (vii) 224,089 shares of common stock beneficially owned by BlueMountain Kicking Horse Fund, L.P. of which 206,793 shares of common stock, 8,648 shares of common stock underlying 125% warrants and 8,648 shares of common stock underlying 135% warrants are registerable hereunder; (viii) 398,603 shares of common stock beneficially owned by BlueMountain Summit Trading L.P. of which all are registerable hereunder; and (ix) 1,696,595 shares of common stock beneficially owned by BlueMountain Credit Opportunities Master Fund I, L.P. of which 1,565,639 shares of common stock, 65,478 shares of common stock underlying 125% warrants and 65,478 shares of common stock underlying 135% warrants are registerable hereunder. Voting and investment power over the registrable securities is held by BlueMountain Capital Management, LLC. The following individuals, who are members of the Investment Committee of BlueMountain Capital Management, LLC, have shared voting and investment power over the registrable securities: Andrew Feldstein; Peter Greatrex; Marina Lutova; Derek Smith; and David Zorub. Derek Smith has been on the Company's board of directors since 2013. The address of these selling shareholders is c/o BlueMountain Capital Management, LLC, 280 Park Avenue, 12th Floor, New York, NY 10017, Attn: General Counsel.

- (4) Includes 1,351,022 shares of common stock, of which 1,336,312 shares are registerable hereunder, and 31,451 shares of common stock underlying 125% warrants and 31,451 shares of common stock underlying 135% warrants, all of which shares are registerable hereunder. The address for Mr. Karfunkel is c/o Eastman Kodak Company, 343 State Street, Rochester, NY 14650.
- (5) Includes 1,519,646 shares of common stock, of which 1,518,646 shares are registerable hereunder, and 60,813 shares of common stock underlying 125% warrants and 60,813 shares of common stock underlying 135% warrants, all of which shares are registerable hereunder.
- (6) Moses Marx is the President of Momar Corporation ("Momar"), Dr. Joseph Fink is Vice President and Treasurer of Momar, and Philippe D. Katz is Vice President and Secretary of Momar. Messrs. Marx, Fink and Katz are the directors of Momar. No person is a controlling shareholder of Momar. Mr. Marx invests through and is a general partner of United Equities Commodities Company ("United Equities"). Mr. Katz is an observer on the Company's board of directors. The business address for each of Momar, Messrs. Marx, Fink and Katz and United Equities is 160 Broadway, 1st Floor, New York, NY 10038.

DESCRIPTION OF CAPITAL STOCK

General

We are authorized to issue up to 500,000,000 shares of common stock, par value \$0.01 per share, and 60,000,000 shares of preferred stock, no par value, no shares of which are outstanding or designated. Each series of preferred stock shall have such rights, preferences and limitations as authorized in our Second Amended and Restated Certificate of Incorporation (“Certificate”) and as determined by resolutions adopted by the Board of Directors of the Company (the “Board”). The rights of holders of the common stock shall be subject to the rights of holders of any series of preferred stock that may be issued from time to time, including liquidation rights, special voting rights and preferences with respect to payment of dividends.

Dividends

Subject to applicable law and to the designated preferential rights of any outstanding series of preferred stock that the Board may cause to be issued, from time to time, the holders of common stock will be entitled to dividends as may be declared from time to time by the Board.

Voting Rights

Each share of common stock entitles the holder thereof to one vote on all matters, including the election of directors, and, except as otherwise required by law or provided in any resolution adopted by our Board with respect to any series of preferred stock, the holders of the shares of common stock will possess all voting power. Generally, all matters to be voted on by the shareholders must be approved by a majority of the votes cast at a meeting at which a quorum is present, subject to state law and any voting rights granted to any of the holders of preferred stock.

Directors

Holders of common stock do not have cumulative voting rights with respect to the election of directors. A nominee for director shall be elected to the Board if the nominee receives a majority of the votes cast at a meeting at which a quorum is present. A nominee receives a majority of the votes cast if the votes “for” such nominee’s election exceed the votes “against” such nominee’s election. However, directors shall be elected by a plurality of the votes cast in any contested election for directors. A contested election is any election in which the number of nominees seeking election is more than the number of directors to be elected. Shareholders will be permitted only to vote “for” or “withhold” authority in a contested election. The Certificate provides for certain limitations on the voting rights of holders of common stock with respect to amendments to the Certificate that affect the terms of outstanding preferred stock.

The number of directors shall be no fewer than nine and not more than 13, or as otherwise fixed pursuant to the Third Amended and Restated By-laws of the Company.

Other

The holders of common stock do not have preemptive rights. There are no subscription, redemption, conversion or sinking fund provisions with respect to the common stock.

Pursuant to section 1123(a)(6) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), the Company is prohibited from issuing any non-voting equity securities for so long as section 1123 of the Bankruptcy Code is in effect and applicable to the Company. This restriction on the issuance of non-voting equity securities is included in the Certificate.

For a more detailed description of the terms of our capital stock, please refer to the documents and other information that we incorporate by reference elsewhere in this prospectus. See “Where You Can Find More Information” and “Incorporation of Certain Information by Reference.”

The transfer agent and registrar for our common stock, which is listed on the New York Stock Exchange, is Computershare Shareowner Services.

Preferred Stock

We are authorized to issue up to 60,000,000 shares of preferred stock, no par value per share, no shares of which are outstanding or designated. The Board has the authority to determine the dividend rights, dividend rates, voting rights, conversion rights, rights and terms of redemption, liquidation preferences and sinking fund terms on

[Table of Contents](#)

any series of preferred stock, the number of shares constituting any such series, the designation thereof and any other relative rights, preferences and limitations of such series.

Depositary Shares

The following description summarizes the general terms and provisions of depositary shares and depositary receipts. The particular terms of any depositary shares and any depositary receipts we offer will be described in the applicable prospectus supplement. You should read the particular terms of any depositary shares and depositary receipts we offer described in the applicable prospectus supplement, together with any deposit agreement relating to a particular series of preferred stock for provisions that may be important to you. The applicable prospectus supplement will also state whether any of the generalized provisions summarized below do not apply to the depositary shares or depositary receipts being offered.

General

We may, at our option, elect to offer fractional shares of preferred stock, rather than full shares of preferred stock. In that event, we will issue receipts for depositary shares, each of which will represent a fraction of a share of a particular series of preferred stock as described in the applicable prospectus supplement. The terms of any depositary shares will be set forth in the applicable prospectus supplement and the provisions of the deposit agreement, which we will file with the SEC.

The shares of any series of preferred stock represented by depositary shares will be deposited under a deposit agreement between us and the depositary named in the applicable prospectus supplement. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled to all the rights and preferences of the preferred stock, including dividend, voting, redemption, conversion and liquidation rights, in proportion to the applicable fraction of a share of preferred stock represented by such depositary share.

The depositary shares will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of preferred stock as described in the applicable prospectus supplements.

Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received in respect of the deposited preferred stock to the record holders of depositary shares relating to such preferred stock in proportion to the number of such depositary shares owned by such holders.

The depositary will distribute any property received by it other than cash to the record holders of depositary shares entitled thereto. If the depositary determines that it is not feasible to make such distribution, it may, with our approval, sell such property and distribute the net proceeds from such sale to such holders.

Redemption

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

Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same date the number of depositary shares representing the shares of preferred stock so redeemed. If fewer than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by the depositary by lot or ratably or by any other equitable method as we may decide.

Anti-Takeover Legislation

We are subject to Section 14A-10A of the New Jersey Shareholders Protection Act, a type of anti-takeover statute designed to protect stockholders against coercive, unfair or inadequate tender offers and other abusive tactics and to encourage any person contemplating a business combination with us to negotiate with our board of directors for the fair and equitable treatment of all stockholders. Subject to certain qualifications and exceptions, the statute prohibits an interested stockholder of a corporation from effecting a business combination with the corporation for a period of five years unless the corporation's board of directors approved the combination prior to the stockholder becoming an interested stockholder or after the stockholder becoming an interested stockholder if the corporation's

[Table of Contents](#)

board of directors approved both the transaction causing a person to become an interested stockholder and the subsequent business combination. In addition, but not in limitation of the five-year restriction, if applicable, corporations covered by the New Jersey statute may not engage at any time in a business combination with any interested stockholder of that corporation unless the combination is approved by the board of directors prior to the interested stockholder's stock acquisition date, the combination receives the approval of two-thirds of the voting stock of the corporation not beneficially owned by the interested stockholder or the combination meets minimum financial terms specified by the statute.

An "interested stockholder" is defined to include any beneficial owner of 10% or more of the voting power of the outstanding voting stock of the corporation and any affiliate or associate of the corporation who within the prior five year period has at any time owned 10% or more of the voting power of the then outstanding stock of the corporation.

The term "business combination" is defined to include a broad range of transactions including, among other things:

- the merger or consolidation of the corporation with the interested stockholder or any corporation that is or after the merger or consolidation would be an affiliate or associate of the interested stockholder,
- the sale, lease, exchange, mortgage, pledge, transfer or other disposition to an interested stockholder or any affiliate or associate of the interested stockholder of 10% or more of the corporation's assets, or
- the issuance or transfer to an interested stockholder or any affiliate or associate of the interested stockholder of 5% or more of the aggregate market value of the stock of the corporation.

The effect of the statute is to protect non-tendering, post-acquisition minority stockholders from mergers in which they will be "squeezed out" after the merger, by prohibiting transactions in which an acquirer could favor itself at the expense of minority stockholders. The statute generally applies to corporations that are organized under New Jersey law.

DESCRIPTION OF THE DEBT SECURITIES

The following is a general description of the debt securities that we may offer from time to time. The particular terms of the debt securities offered by any prospectus supplement and the extent, if any, to which the general provisions described below may apply to those securities will be described in the applicable prospectus supplement. We also may sell hybrid securities that combine certain features of debt securities and other securities described in this prospectus. As you read this section, please remember that the specific terms of a debt security as described in the applicable prospectus supplement will supplement and may modify or replace the general terms described in this section. If there are differences between the applicable prospectus supplement and this prospectus, the applicable prospectus supplement will control. As a result, the statements we make in this section may not apply to the debt security you purchase.

As used in this “Description of the Debt Securities,” the “Company” refers to Eastman Kodak Company, or EKC, and does not, unless the context otherwise indicates, include our subsidiaries. Capitalized terms used but not defined in this section have the respective meanings set forth in the applicable indenture.

The debt securities that we offer will be senior debt securities or subordinated debt securities and may be secured or unsecured. We expect to issue senior debt securities under an indenture, which we refer to as the senior indenture, to be entered into between EKC and the trustee named in the applicable prospectus supplement. We expect to issue subordinated debt securities under an indenture, which we refer to as the subordinated indenture, to be entered into between EKC and the trustee named in the applicable prospectus supplement. We refer to the senior indenture and the subordinated indenture as the indentures, and to each of the trustees under the indentures as a trustee. In addition, the indentures may be supplemented or amended as necessary to set forth the terms of any debt securities issued under the indentures. You should read the indentures, including any amendments or supplements, carefully to fully understand the terms of the debt securities. The forms of the senior indenture and the subordinated indenture have been filed as exhibits to the registration statement of which this prospectus is a part. The indentures are subject to, and are governed by, the Trust Indenture Act of 1939.

The senior debt securities will be EKC’s unsubordinated obligations. They will rank equally with each other and all of our other unsubordinated debt, unless otherwise indicated in the applicable prospectus supplement. The subordinated debt securities will be subordinated in right of payment to the prior payment in full of our senior debt. See “—Subordination of Subordinated Debt Securities.” The subordinated debt securities will rank equally with each other and all other subordinated debt of EKC, unless otherwise indicated in the applicable prospectus supplement.

The indentures do not limit the amount of debt securities that can be issued thereunder and provide that debt securities of any series may be issued thereunder up to the aggregate principal amount that we may authorize from time to time. Unless otherwise provided in the applicable prospectus supplement, the indentures do not limit the amount of other indebtedness or securities that we may issue. Unless otherwise provided in the applicable prospectus supplement, we may issue debt securities of the same series at more than one time and, unless prohibited by the terms of the series, we may reopen a series for issuances of additional debt securities, without the consent of the holders of the outstanding debt securities of that series. All debt securities issued as a series, including those issued pursuant to any reopening of a series, will vote together as a single class unless otherwise described in the applicable prospectus supplement for such series.

Reference is made to the applicable prospectus supplement for the following and other possible terms of each series of the debt securities in respect of which this prospectus is being delivered:

- (1) the title of the debt securities;
- (2) any limit upon the aggregate principal amount of the debt securities;
- (3) the price at which we will issue the debt securities;
- (4) if other than 100% of the principal amount, the portion of their principal amount payable upon maturity of the debt securities;
- (5) the date or dates on which the principal of the debt securities will be payable (or method of determination thereof);

(6) the rate or rates (or method of determination thereof) at which the debt securities will bear interest (including any interest rates applicable to overdue payments), if any, the date or dates from which any such interest

Table of Contents

will accrue and on which such interest will be payable, the record dates for the determination of the holders to whom interest is payable, and the dates on which any other amounts, if any, will be payable;

(7) if other than as set forth herein, the place or places where the principal of, premium and other amounts, if any, and interest, if any, on the debt securities will be payable;

(8) the price or prices at which, the period or periods within which and the terms and conditions upon which debt securities may be redeemed, in whole or in part, at our option;

(9) our obligation, if any, to redeem, repurchase or repay debt securities, whether pursuant to any sinking fund or analogous provisions or pursuant to other provisions set forth therein or at the option of a holder thereof and the price or prices at which and the period or periods within which and the terms and conditions upon which securities of the series shall be redeemed, purchased or repaid, in whole or in part;

(10) the denominations in which the debt securities shall be issuable;

(11) the form of such debt securities, including such legends as required by law or as we deem necessary or appropriate, and the form of temporary global security that may be issued;

(12) whether the debt securities are convertible into other securities of the Company and, if so, the terms and conditions of such conversion;

(13) whether there are any authentication agents, paying agents, transfer agents or registrars with respect to the debt securities;

(14) whether the debt securities will be represented in whole or in part by one or more global notes registered in the name of a depository or its nominee;

(15) the ranking of such debt securities as senior debt securities or subordinated debt securities;

(16) if other than U.S. dollars, the currency or currencies (including composite currencies or currency units) in which the debt securities may be purchased and in which payments on the debt securities will be made (which currencies may be different for payments of principal, premium or other amounts, if any, and/or interest, if any);

(17) if the debt securities will be secured by any collateral, a description of the collateral and the terms and conditions of the security and realization provisions;

(18) the provisions relating to any guarantee of the debt securities, including the ranking thereof;

(19) the ability, if any, to defer payments of principal, interest, or other amounts; and

(20) any other specific terms or conditions of the debt securities, including any additional events of default or covenants provided for with respect to the debt securities, and any terms that may be required by or advisable under applicable laws or regulations.

“Principal” when used herein includes any premium on any series of the debt securities.

Unless otherwise provided in the applicable prospectus supplement relating to any debt securities, principal and interest, if any, will be payable, and transfers of the debt securities may be registered, at the office or offices or agency we maintain for such purposes, provided that payment of interest on the debt securities will be paid at such place by check mailed to the persons entitled thereto at the addresses of such persons appearing on the security register. Interest on the debt securities, if any, will be payable on any interest payment date to the persons in whose names the debt securities are registered at the close of business on the record date for such interest payment.

The debt securities may be issued only in fully registered form and, unless otherwise provided in the applicable prospectus supplement relating to any debt securities, in minimum denominations of \$1,000 and any integral multiple thereof. Additionally, the debt securities may be represented in whole or in part by one or more global notes registered in the name of a depository or its nominee and, if so represented, interests in such global note will be shown on, and transfers thereof will be effected only through, records maintained by the designated depository and its participants.

Unless otherwise provided in the applicable prospectus supplement relating to any debt securities, the debt securities may be exchanged for an equal aggregate principal amount of debt securities of the same series and date

[Table of Contents](#)

of maturity in such authorized denominations as may be requested upon surrender of the debt securities at an agency of the Company maintained for such purpose and upon fulfillment of all other requirements of such agent. No service charge will be made for any registration of transfer or exchange of the debt securities, but we may require payment of an amount sufficient to cover any tax or other governmental charge payable in connection therewith.

The indentures require the annual filing by the Company with the trustee of a certificate as to compliance with certain covenants contained in the indentures.

We will comply with Section 14(e) under the Exchange Act, to the extent applicable, and any other tender offer rules under the Exchange Act that may be applicable, in connection with any obligation to purchase debt securities at the option of the holders thereof. Any such obligation applicable to a series of debt securities will be described in the applicable prospectus supplement relating thereto.

The statements made hereunder relating to the indentures and the debt securities are summaries of certain provisions thereof and do not purport to be complete and are qualified in their entirety by reference to all provisions of the indentures and the debt securities and the descriptions thereof, if different, in the applicable prospectus supplement.

Registration, Transfer, Payment and Paying Agent

We will maintain an office or agency where the debt securities may be presented for payment, conversion, registration of transfer and exchange. The indenture trustee is appointed security registrar for purposes of registering, and registering transfers of, the debt securities. Unless otherwise indicated in the applicable prospectus supplement, the indenture trustee also will act as paying agent, and will be authorized to pay principal and interest, if any, on any debt security of any series.

There will be no service charge for any registration of transfer or exchange of debt securities, but we or the indenture trustee may require a holder to pay any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of the debt securities, other than certain exchanges not involving any transfer, and other than certain exchanges or transfers as we may specify.

Subordination of Subordinated Debt Securities

We will set forth in the applicable prospectus supplement the terms and conditions, if any, upon which any series of subordinated debt securities is subordinated to debt securities of another series or to our other indebtedness. The terms will include a description of:

- (1) the indebtedness ranking senior to the debt securities being offered;
- (2) the restrictions, if any, on payments to the holders of the debt securities being offered while a default with respect to the senior indebtedness is continuing;
- (3) the restrictions, if any, on payments to the holders of the debt securities being offered following an event of default; and
- (4) the provisions requiring holders of the debt securities being offered to remit some payments to the holders of senior indebtedness.

Covenants

We will set forth in the applicable prospectus supplement any covenants applicable to any issue of debt securities.

No Protection in the Event of a Change of Control

Unless we state otherwise in the applicable prospectus supplement, the debt securities will not contain any provisions which may afford holders of the debt securities protection in the event we have a change in control or in the event of a highly leveraged transaction (whether or not such transaction results in a change in control) which could adversely affect holders of debt securities.

Events of Default

Except as otherwise set forth in the prospectus supplement relating to any debt securities, an event of default with respect to the debt securities of any series is defined in the indentures as:

Table of Contents

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

(2) default in the payment of all or any part of the principal of any of the debt securities of such series as and when the same shall become due and payable either at maturity, upon any redemption or repurchase, by declaration or otherwise;

(3) default in the performance, or breach, of any other covenant or warranty contained in the debt securities of such series or set forth in the applicable indenture (other than the failure to comply with any covenant or agreement to file with the trustee information required to be filed with the SEC or a default in the performance or breach of a covenant or warranty included in the applicable indenture solely for the benefit of one or more series of debt securities other than such series) and continuance of such default or breach for a period of 90 days after due notice by the trustee or by the holders of at least 25% in principal amount of the outstanding securities of such series; or

(4) certain events of bankruptcy, insolvency or reorganization of the Company and, as specified in the applicable prospectus supplement, certain of our subsidiaries.

Any failure to perform, or breach of, any covenant or agreement by the Company in respect of the debt securities with respect to the filing with the trustee of the information required to be filed with the SEC shall not be a default or an event of default. Remedies against the Company for any such failure or breach will be limited to liquidated damages. If there is such a failure or breach and continuance of such failure or breach for a period of 90 days after the date on which there has been given, by registered or certified mail, to the Company by the trustee or to the Company and the trustee by the holders of at least 25% in principal amount of the outstanding debt securities of such series, a written notice specifying such failure or breach and requiring it to be remedied and stating that such notice is a "Notice of Reporting Noncompliance" under the indenture, the Company will pay liquidated damages to all holders of debt securities, at a rate per year equal to 0.25% of the principal amount of such debt securities from the 90th day following such notice to and including the 150th day following such notice and at a rate per year equal to 0.5% of the principal amount of such Securities from and including the 151st day following such notice, until such failure or breach is cured.

Additional Events of Default may be added for the benefit of holders of certain series of debt securities that, if added, will be described in the prospectus supplement relating to such debt securities.

The indentures provide that the trustee shall notify the holders of debt securities of each series of any continuing default known to the trustee that has occurred with respect to such series within 90 days after the occurrence thereof. The indentures provide that, notwithstanding the foregoing, except in the case of default in the payment of the principal of, or interest, if any, on any of the debt securities of such series, the trustee may withhold such notice if the trustee in good faith determines that the withholding of such notice is in the interests of the holders of debt securities of such series. In addition, we will be required to deliver to the trustee, within 120 days after the end of each year, a certificate indicating whether the officers signing such certificate on our behalf know of any default with respect to the debt securities of any series that occurred during the previous year, specifying each such default and the nature thereof.

Except as otherwise set forth in the prospectus supplement relating to any debt securities, the indentures provide that, if an event of default (other than an event of default relating to certain events of bankruptcy, insolvency or reorganizations) with respect to any series of debt securities shall have occurred and be continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of debt securities of such series then outstanding, by notice to the Company, may declare the principal amount of all debt securities of such series and accrued and unpaid interest to be due and payable immediately, but upon certain conditions such declaration may be annulled. Any past defaults and the consequences thereof, except a default in the payment of principal of or interest, if any, on debt securities of such series, may be waived by the holders of a majority in principal amount of the debt securities of such series then outstanding.

Subject to the provisions of the indentures relating to the duties of the trustee, in case an event of default with respect to any series of debt securities shall occur and be continuing, the trustee shall not be under any obligation to exercise any of the trusts or powers vested in it by the indentures at the request or direction of any of the holders of such series, unless such holders shall have offered to such trustee security or indemnity reasonably satisfactory to such trustee. The holders of a majority in aggregate principal amount of the debt securities of each series affected and then outstanding shall have the right to direct the time, method and place of conducting any

[Table of Contents](#)

proceeding for any remedy available to the trustee under the applicable indenture or exercising any trust or power conferred on the trustee with respect to the debt securities of such series; provided that the trustee may refuse to follow any direction which is in conflict with any law or such indenture and subject to certain other limitations.

No holder of any debt security of any series will have any right by virtue or by availing of any provision of the indentures to institute any proceeding at law or in equity or in bankruptcy or otherwise with respect to the indentures or for any remedy thereunder, unless such holder shall have previously given the trustee written notice of an event of default with respect to debt securities of such series and unless the holders of at least 25% in aggregate principal amount of the outstanding debt securities of such series shall also have made written request, and offered reasonably satisfactory indemnity, to the trustee to institute such proceeding as trustee, and the trustee shall have failed to institute such proceeding within 60 days after its receipt of such request, and the trustee shall not have received from the holders of a majority in aggregate principal amount of the outstanding debt securities of such series a direction inconsistent with such request. However, the right of a holder of any debt security to receive payment of the principal of and interest, if any, on such debt security on or after the due dates expressed in such debt security, or to institute suit for the enforcement of any such payment on or after such dates, shall not be impaired or affected without the consent of such holder.

Merger

Each indenture provides that the Company may consolidate with, sell, convey or lease all or substantially all of its assets to, or amalgamate or merge with or into, any other corporation, if:

(1) either (a) the Company is the continuing company or (b) the successor company is a corporation incorporated under the laws of the United States or any state thereof, a member state of the European Union or any political subdivision thereof and expressly assumes the due and punctual payment of the principal of and interest on all the debt securities outstanding under such indenture according to their tenor and the due and punctual performance and observance of all of the covenants and conditions of such indenture to be performed or observed by us; and

(2) the Company or such continuing or successor company, as the case may be, is not, immediately after such amalgamation, merger, consolidation, sale, conveyance or lease, in material default in the performance or observance of any such covenant or condition.

Satisfaction and Discharge of the Indentures

The indenture with respect to any series of debt securities (except for certain specified surviving obligations, including our obligation to pay the principal of and interest, if any, on the debt securities of such series) will be discharged and cancelled upon the satisfaction of certain conditions, including the payment of all the debt securities of such series or the deposit with the trustee under such indenture of cash or appropriate government obligations or a combination thereof sufficient for such payment or redemption in accordance with the applicable indenture and the terms of the debt securities of such series.

Modification of the Indentures

The indentures contain provisions permitting the Company and the trustee thereunder, with the consent of the holders of not less than a majority in aggregate principal amount of the debt securities of each series at the time outstanding under the applicable indenture affected thereby, to execute supplemental indentures adding certain provisions to, or changing in any manner or eliminating any of the provisions of, the applicable indenture or any supplemental indenture or modifying in any manner the rights of the holders of the debt securities of each such series; provided that, unless otherwise provided in the applicable prospectus supplement, no such supplemental indenture may:

(1) extend the final maturity date of any debt security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of any interest thereon, or reduce any amount payable on redemption thereof, or impair or affect the right of any holder of debt securities to institute suit for payment thereof or, if the debt securities provide therefor, any right of repayment at the option of the holders of the debt securities, without the consent of the holder of each debt security so affected;

(2) reduce the aforesaid percentage of debt securities of such series, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all debt securities of such series so affected; or

[Table of Contents](#)

(3) reduce the amount of principal payable upon acceleration of the maturity date of any original issue discount security.

Additional amendments requiring the consent of each holder affected thereby may be added for the benefit of holders of certain series of debt securities and, if added, will be described in the applicable prospectus supplement relating to such debt securities.

Additionally, in certain circumstances prescribed in the indenture governing the relevant series of debt securities, the Company and the trustee may execute supplemental indentures without the consent of the holders of debt securities.

Defeasance

The indentures provide, if such provision is made applicable to the debt securities of any series, that the Company may elect to terminate, and be deemed to have satisfied, all of its obligations with respect to such debt securities (except for the obligations to register the transfer or exchange of such debt securities, to replace mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of the debt securities, to compensate and indemnify the trustee and to punctually pay or cause to be paid the principal of, and interest, if any, on all debt securities of such series when due) (“defeasance”) upon the deposit with the trustee, in trust for such purpose, of funds and/or government obligations which through the payment of principal and interest in accordance with their terms will provide funds in an amount sufficient to pay the principal of and premium and interest, if any, on the outstanding debt securities of such series, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor. Such a trust may be established only if the Company complies with certain conditions, including delivery to the trustee of an opinion of counsel confirming that, subject to customary assumptions and exclusions, the holders of such debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. 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.

The applicable prospectus supplement may further describe these or other provisions, if any, permitting defeasance with respect to the debt securities of any series.

Global Debt Securities

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depository (a “Debt Depository”) identified in the applicable prospectus supplement. Global securities may be issued only in fully registered form and in either temporary or permanent form. Unless otherwise provided in such prospectus supplement, debt securities that are represented by a global security will be issued in denominations of \$1,000 or any integral multiple thereof and will be issued in registered form only, without coupons. Payments of principal of, and interest, if any, on debt securities represented by a global security will be made by the Company to the trustee under the applicable indenture, and then forwarded to the Debt Depository.

We anticipate that any global securities will be deposited with, or on behalf of, The Depository Trust Company (“DTC”), and that such global securities will be registered in the name of Cede & Co., DTC’s nominee. We further anticipate that the following provisions will apply to the depository arrangements with respect to any such global securities. Any additional or differing terms of the depository arrangements will be described in the applicable prospectus supplement relating to a particular series of debt securities issued in the form of global securities.

So long as DTC or its nominee is the registered owner of a global security, DTC or its nominee, as the case may be, will be considered the sole holder of the debt securities represented by such global security for all purposes under the applicable indenture. Except as described below, owners of beneficial interests in a global security will not be entitled to have debt securities represented by such global security registered in their names, will not receive or be entitled to receive physical delivery of debt securities in certificated form and will not be considered the owners or holders thereof under the applicable indenture. The laws of some states require that certain purchasers of securities take physical delivery of such securities in certificated form; accordingly, such laws may limit the transferability of beneficial interests in a global security.

If DTC is at any time unwilling or unable to continue as depository or if at any time DTC ceases to be a clearing agency registered under the Exchange Act if so required by applicable law or regulation, and, in either case,

[Table of Contents](#)

we do not appoint a successor Debt Depository within 90 days, we will issue individual debt securities in certificated form in exchange for the global securities. In addition, we may determine, at any time and subject to the procedures of DTC, not to have any debt securities represented by one or more global securities, and, in such event, will issue individual debt securities in certificated form in exchange for the relevant global securities. Beneficial interests in global securities will also be exchangeable for individual debt securities in certificated form in the event of a default or an Event of Default or upon prior written notice to the trustee by or on behalf of DTC or at the request of the owner of such beneficial interests, in accordance with the indenture. In any of the foregoing circumstances, an owner of a beneficial interest in a global security will be entitled to physical delivery of individual debt securities in certificated form of like tenor and rank, equal in principal amount to such beneficial interest, and to have such debt securities in certificated form registered in its name. Unless otherwise described in the applicable prospectus supplement, debt securities so issued in certificated form will be issued in denominations of \$1,000 or any integral multiple thereof, and will be issued in registered form only, without coupons.

DTC is a limited purpose trust company organized under the New York Banking Law, 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 Exchange Act. DTC holds securities that its participants (“Participants”) deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants’ accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations (“Direct Participants”). DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others, such as securities brokers and dealers, and banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). The rules applicable to DTC and its Participants are on file with the Commission.

Purchases of debt securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the debt securities on DTC’s records. The ownership interest of each actual purchaser of each debt security (“Beneficial Owner”) is in turn recorded on the Direct and Indirect Participants’ records. A Beneficial Owner does not receive written confirmation from DTC of its purchase, but is expected to receive a written confirmation providing details of the transaction, as well as periodic statements of its holdings, from the Direct or Indirect Participants through which such Beneficial Owner entered into the action. Transfers of ownership interests in debt securities are accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners do not receive certificates representing their ownership interests in debt securities, except as described above.

To facilitate subsequent transfers, the debt securities are registered in the name of DTC’s partnership nominee, Cede & Co. The deposit of the debt securities with DTC and their registration in the name of Cede & Co. will effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the debt securities; DTC records reflect only the identity of the Direct Participants to whose accounts debt securities are credited, which may or may not be the Beneficial Owners. The Participants remain responsible for keeping account of their holdings on behalf of their customers.

Delivery of notice and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners are governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Neither DTC nor Cede & Co. consents or votes with respect to the debt securities. Under its usual procedures, DTC mails a proxy (an “Omnibus Proxy”) to the issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the debt securities are credited on the record date (identified on a list attached to the Omnibus Proxy).

Principal and interest payments, if any, on the debt securities will be made to DTC. DTC’s practice is to credit Direct Participants’ accounts on the payment date in accordance with their respective holdings as shown on DTC’s records, unless DTC has reason to believe that it will not receive payment on the payment date. Payments by Participants to Beneficial Owners are governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and are the responsibility

[Table of Contents](#)

of such Participant and not of DTC, the trustee or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest, if any, to DTC is our or the trustee's responsibility, disbursement of such payments to Direct Participants is DTC's responsibility, and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the debt securities at any time by giving reasonable notice to us or the trustee. Under such circumstances, in the event that a successor securities depository is not appointed, debt security certificates are required to be printed and delivered.

We may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, debt security certificates will be printed and delivered.

We have obtained the information in this section concerning DTC and DTC's book-entry system from sources that we believe to be reliable, but we take no responsibility for the accuracy of this information.

None of us, any underwriter or agent, the trustee or any applicable paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in a global security, or for maintaining, supervising or reviewing any records relating to such beneficial interest.

Trustee

A trustee under the indentures will be appointed. The Company and its subsidiaries may maintain accounts and conduct other banking transactions with affiliates of the trustee.

No Personal Liability of Directors, Officers, Employees and Shareholders

No director, officer, employee, incorporator, shareholder, member, manager or partner of the Company, as such, will have any liability for any obligations of the Company under the debt securities of any series or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of debt securities of any series by accepting such debt securities waives and releases all such liability. The waiver and release are part of the consideration for issuance of such securities. The waiver may not be effective to waive liabilities under the federal securities laws.

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.

DESCRIPTION OF OTHER SECURITIES

We will set forth in the applicable prospectus supplement a description of any warrants, purchase contracts, guarantees or units that may be offered pursuant to this prospectus. The warrants, purchase contracts, guarantees and units and each warrant agreement, purchase contract agreement, guarantee and unit agreement will be governed by the laws of the State of New York.

PLAN OF DISTRIBUTION

We or any of the selling shareholders may sell the offered securities through agents, through underwriters or dealers, directly to one or more purchasers or through a combination of any of these methods of sale. If so, a prospectus supplement will include the following information:

- the names of any underwriters, dealers or agents;
- the purchase price of securities from us and, if the purchase price is not payable in U.S. dollars, the currency or composite currency in which the purchase price is payable;
- the net proceeds to us from the sale of securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters' compensation;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any commissions paid to agents.

In addition, any of the selling shareholders may enter into derivative, hedging, forward sale, option or other types of transactions with third parties, or sell securities not covered by the registration statement of which this prospectus forms a part to third parties, through a stock exchange, including block trades or ordinary broker's transactions, or through broker-dealers acting either as principal or agent, or through an underwritten public offering, through privately negotiated transactions or through a combination of any such methods of sale. In connection with such a transaction, the third parties may sell securities covered by and pursuant to the registration statement of which this prospectus forms a part and an applicable prospectus supplement or pricing supplement, as the case may be. If so, the third party may use securities borrowed from any of the selling shareholders or others to settle such sales and may use securities received from such selling shareholder to close out or hedge any related short positions. Any selling shareholder may also loan or pledge securities covered by the registration statement of which this prospectus forms a part and an applicable prospectus supplement to third parties, who may sell the loaned securities or, in an event of default in the case of a pledge, sell the pledged securities pursuant to the registration statement of which this prospectus forms a part and the applicable prospectus supplement or pricing supplement, as the case may be.

In this "Plan of Distribution", unless the context otherwise indicates, references to selling shareholders include their pledgees, donees, transferees or successors in interest.

Sale Through Underwriters or Dealers

If we or any of the selling shareholders use underwriters in the sale, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we or any of the selling shareholders inform you otherwise in a prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers. If we or any of the selling shareholders utilize an underwriter or underwriters in the sale, we will execute an underwriting agreement with such underwriters at the time of sale to them. Any underwriters will use a prospectus supplement in connection with any offers or sales of securities pursuant to the registration statement of which this prospectus forms a part.

We or any of the selling shareholders may make sales of our common stock to or through one or more underwriters, dealers or agents in at-the-market offerings and will do so pursuant to the terms of a distribution agreement between the underwriters, dealers or agents and us. If we or any of the selling shareholders engage in at-the-market sales pursuant to a distribution agreement, we will issue and sell shares of our common stock to or through one or more underwriters, dealers or agents, which may act on an agency basis or on a principal basis. During the term of any such distribution agreement, we may sell shares on a daily basis in exchange transactions or otherwise as we agree with the underwriters, dealers or agents. The distribution agreement may provide that any shares of our common stock sold will be sold at prices related to the then prevailing market prices for our securities.

[Table of Contents](#)

Therefore, exact figures regarding net proceeds to us or commissions to be paid are impossible to determine and will be described in a prospectus supplement. Pursuant to the terms of the distribution agreement, we also may agree to sell, and the relevant underwriters, dealers or agents may agree to solicit offers to purchase, blocks of our common stock. The terms of each such distribution agreement will be set forth in more detail in a prospectus supplement to this prospectus. To the extent that any named underwriter, dealer or agent acts as principal pursuant to the terms of a distribution agreement, or if we offer to sell shares of our common stock through another dealer acting as underwriter, then such named underwriter may engage in certain transactions that stabilize, maintain or otherwise affect the price of our common stock. We will describe any such activities in the applicable prospectus supplement. To the extent that any named dealer or agent acts as agent on a best efforts basis pursuant to the terms of a distribution agreement, such dealer or agent will not engage in any such stabilization transactions.

In connection with any particular offering pursuant to the registration statement of which this prospectus forms a part, an underwriter may engage in stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price.

Over-allotment involves sales by an underwriter of shares in excess of the number of shares an underwriter is obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in an over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in an over-allotment option. An underwriter may close out any short position by either exercising its over-allotment option and/or purchasing shares in the open market.

Syndicate covering transactions involve purchases of the common shares in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, an underwriter will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which it may purchase shares through an over-allotment option. If an underwriter sells more shares than could be covered by an over-allotment option, a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if an underwriter is concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.

Penalty bids permit representatives to reclaim a selling concession from a syndicate member when the common shares originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common shares or preventing or retarding a decline in the market price of the common shares. As a result, the price of our common shares may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the New York Stock Exchange or otherwise and, if commenced, may be discontinued at any time.

If we or any of the selling shareholders use dealers in the sale of securities, we or such selling shareholders will sell the securities to the dealers as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in a prospectus supplement the names of the dealers and the terms of the transaction.

Direct Sales and Sales Through Agents

We or any of the selling shareholders may sell the securities directly, without the involvement of underwriters, dealers or agents. We or any of the selling shareholders also may sell the securities through agents we designate from time to time, who may be deemed to be underwriters as that term is defined in the Securities Act. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the securities, and we will describe any commissions payable by us or any of the selling shareholders to the agent. Unless we inform you otherwise in a prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

[Table of Contents](#)

We or any of the selling shareholders may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the applicable prospectus supplement.

Delayed Delivery Contracts

If we so indicate in a prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement would describe the commission payable for solicitation of those contracts.

General Information

We or any of the selling shareholders may have agreements with the agents, dealers and underwriters to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers and underwriters may be customers of, engage in transactions with or perform services for us or any of the selling shareholders in the ordinary course of their business.

In order to comply with the securities laws of some states, if applicable, securities must be sold in those states only through registered or licensed brokers or dealers. In addition, some states may restrict us from selling securities unless the securities have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

We have informed the selling shareholders that the anti-manipulation provisions of Regulation M under the Exchange Act may apply to their sales of common stock.

We have agreed to indemnify selling shareholders against certain liabilities arising under the Securities Act from sales of common stock. We have agreed, among other things, to pay expenses incurred by us in connection with the registration and sale of the shares of common stock covered by this prospectus, including all SEC, New York Stock Exchange and blue sky registration and filing fees, printing expenses, transfer agents' and registrars' fees, and the reasonable fees and disbursements of our outside counsel and independent accountants.

LEGAL MATTERS

Unless otherwise specified in a prospectus supplement accompanying this prospectus, the validity of the common stock or preferred stock being offered hereby will be passed upon for us by Day Pitney LLP, Parsippany, New Jersey, and the validity of the other securities being offered hereby will be passed upon for us by Gibson, Dunn & Crutcher LLP, New York, New York.

EXPERTS

The consolidated balance sheets of Eastman Kodak Company and subsidiaries as of December 31, 2015 and 2014, and the related consolidated statements of operations, comprehensive income (loss), changes in shareholders' equity, and cash flows for the years ended December 31, 2015 and 2014, the four month period ended December 31, 2013, and the eight month period ended August 31, 2013 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2015 have been incorporated by reference herein and in the registration statement in reliance upon the reports of PricewaterhouseCoopers LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

EASTMAN KODAK COMPANY

**COMMON STOCK
PREFERRED STOCK
DEBT SECURITIES
WARRANTS
DEPOSITARY SHARES
PURCHASE CONTRACTS
GUARANTEES
UNITS**

PROSPECTUS

August 9, 2016

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table shows the costs and expenses, other than underwriting discounts and commissions, payable in connection with the sale and distribution of the securities being registered. All amounts, other than the SEC registration fee, are estimated and actual costs and expenses may vary significantly from such estimates based on the number and nature of offering(s) in which securities are issued.

<u>Type</u>	<u>Amount</u>
SEC registration fee	\$ 120,840
Printing expenses	50,000
Legal fees and expenses	250,000
Accounting fees and expenses	125,000
Transfer agent fees and expenses	10,000
Rating agency fees	750,000
Trustee's and depository's fees and expenses	20,000
Miscellaneous expenses	10,000
Total	<u>\$1,335,840</u>

Item 15. Indemnification of Directors and Officers.

The registrant is incorporated under the laws of the State of New Jersey.

The New Jersey Business Corporation Act provides that a New Jersey corporation has the power to indemnify a director or officer against his or her expenses and liabilities in connection with any proceeding involving the director or officer by reason of his or her being or having been such a director or officer, other than a proceeding by or in the right of the corporation, if such a director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, such director or officer had no reasonable cause to believe his or her conduct was unlawful.

The New Jersey Business Corporation Act further provides that indemnification and advancement of expenses shall not exclude any other rights, including the right to be indemnified against liabilities and expenses incurred in proceedings by or in the right of the corporation, to which a director or officer may be entitled under a certificate of incorporation, bylaw, agreement, vote of shareholders, or otherwise; provided that no indemnification shall be made to or on behalf of a director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts or omissions (a) were in breach of his or her duty of loyalty to the corporation or its shareholders, (b) were not in good faith or involved a knowing violation of law or (c) resulted in receipt by the director or officer of an improper personal benefit.

Section 6 of the Second Amended and Restated Certificate of Incorporation of the registrant provides that to the fullest extent permitted by the New Jersey Business Corporation Act, directors and officers of the registrant shall not be personally liable to the registrant or its shareholders for damages for breach of any duty owed to the registrant or its shareholders.

Section 2(a) of Article 8 the Third Amended and Restated By-laws of the registrant provides that the registrant shall indemnify and hold harmless against all liabilities any person who is or was a director or officer, including the director's or officer's estate (an "Indemnitee"), who is or was a party to or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise in respect of any past, present or future matter, including any action suit or proceeding by or in the right of the corporation (an "Action"), by reason of the fact that the Indemnitee is or was serving as a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of any other enterprise; provided, however, that the corporation shall not indemnify an Indemnitee if a judgment or other final adjudication adverse to the Indemnitee establishes that the Indemnitee's acts or omissions (a) were acts or omissions that the Indemnitee knew or believed to be contrary to the best interests of the corporation or shareholders in connection with a matter to which he had a material conflict of interest, (b) were not in good faith or involved a knowing violation of law or (c) resulted in receipt by such person of an improper personal benefit. Subject to the

Table of Contents

receipt by the corporation of an undertaking by the Indemnatee to repay Expenses if there shall be a judgment or other final adjudication that the Indemnatee is not entitled to receive reimbursement of Expenses from the corporation, the corporation shall pay or reimburse an Indemnatee within 20 days following the later of (i) the receipt of such undertaking and (ii) receipt of a demand from the Indemnatee for payment or reimbursement of Expenses, in advance of final disposition or otherwise, to the full extent authorized or permitted by law, Expenses as incurred by the Indemnatee in defending any actual or threatened Action by reason of the fact that the Indemnatee is or was serving as a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of any other enterprise; provided, however, the corporation shall not be required hereunder to further pay or reimburse Expenses and, if requested by the corporation, shall be entitled to repayment of Expenses from the Indemnatee following any plea formally entered by or formal written admission by the Indemnatee in the Action for which the Indemnatee has sought payment or reimbursement of Expenses or indemnification that the Indemnatee has committed such acts or omissions establishing that the Indemnatee is not entitled to indemnification pursuant to subsection (a). The Indemnatee shall be entitled to be paid or reimbursed for Expenses incurred in any Action to obtain indemnification or payment or reimbursement of Expenses under subsection (a) on the same terms, conditions and limitations as the Indemnatee is entitled to Expenses under the previous sentence. The corporation shall not be obligated under subsection (a) to provide any indemnification or any payment or reimbursement of Expenses to an Indemnatee in connection with an Action (or part thereof) initiated by the Indemnatee unless the Board has authorized or consented to the Action (or part thereof) in a resolution adopted by the Board. For the purposes of Article 8, "Expenses" shall include, without limitation, all reasonable fees, costs and expenses, including without limitation, attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, or investigating an Action, including any Action to obtain indemnification or payment or reimbursement of Expenses.

In addition, Section 2(b) of Article 8 of the Third Amended and Restated By-laws of the registrant also provides that, to the extent authorized from time to time by the board or directors of the registrant and subject to any terms and conditions thereof, the corporation may, to the full extent authorized or permitted by law, advance Expenses and indemnify and hold harmless against liabilities any person not covered by subsection (a) of Section 2, including the person's estate (an "Employee Indemnatee"), who is or was an employee or agent of this corporation, or who is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of any other enterprise, or the legal representative of any such person, and who is or was a party to or threatened to be made a party to any Action by reason of the fact that the Employee Indemnatee is or was serving in any of the foregoing capacities.

Section 3 of Article 8 of the Third Amended and Restated By-laws of the registrant further provides that the right of an Indemnatee or Employee Indemnatee to indemnification and payment or reimbursement of Expenses by the corporation under Section 2 of Article 8 of the Third Amended and Restated By-laws shall be in addition to, and not in lieu of, any statutory or other right of indemnification or payment, advancement or reimbursement of Expenses provided to any Indemnatee or Employee Indemnatee. Section 3 of Article 8 further provides that no amendment of Article 8 of the Third Amended and Restated By-laws shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment.

Item 16. Exhibits.

A list of exhibits filed with this registration statement is set forth in the Exhibit Index, and such exhibits are incorporated into this Item 16 by reference.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (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

Table of Contents

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

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

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

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
 - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date
 - (iii) each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration

Table of Contents

statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (7) In connection with offerings of securities to existing security holders pursuant to warrant or rights where any securities not taken by security holders are to be reoffered to the public, to supplement the prospectus, after the expiration of the subscription period for a warrant or rights offering, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.
- (8) In connection with offerings of securities at competitive bids: (a) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of Section 10(a) of the Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements thereto, and (b) to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made.
- (9) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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,

Table of Contents

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 of 1933 and will be governed by the final adjudication of such issue.

- (10) That:
- (i) 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.
 - (ii) 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.
- (11) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Eastman Kodak Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rochester, State of New York, on August 9, 2016.

EASTMAN KODAK COMPANY

By: /s/ Sharon E. Underberg
Name: Sharon E. Underberg
Title: General Counsel, Secretary & Senior Vice President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned do hereby constitute and appoint Jeffrey J. Clarke, David E. Bullwinkle and Sharon E. Underberg, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this registration statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this registration statement, to any and all amendments, both pre-effective and post-effective, supplements to this registration statement and subsequent registration statements relating to the offering to which this registration statement relates (including pursuant to Rule 462(b)), and to any and all instruments or documents filed as part of or in conjunction with this registration statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jeffrey J. Clarke</u> Jeffrey J. Clarke	Chief Executive Officer and Director (Principal Executive Officer)	August 9, 2016
<u>/s/ David E. Bullwinkle</u> David E. Bullwinkle	Chief Financial Officer (Principal Financial Officer)	August 9, 2016
<u>/s/ Eric H. Samuels</u> Eric H. Samuels	Chief Accounting Officer and Corporate Controller (Principal Accounting Officer)	August 9, 2016
<u>/s/ Mark S. Burgess</u> Mark S. Burgess	Director	August 9, 2016
<u>/s/ James V. Continenza</u> James V. Continenza	Chairman	August 9, 2016
<u>/s/ Matthew A. Doheny</u> Matthew A. Doheny	Director	August 9, 2016

[Table of Contents](#)

<u> /s/ John A. Janitz</u> John A. Janitz	Director	August 9, 2016
<u> /s/ George Karfunkel</u> George Karfunkel	Director	August 9, 2016
<u> /s/ Jason New</u> Jason New	Director	August 9, 2016
<u> /s/ William G. Parrett</u> William G. Parrett	Director	August 9, 2016
<u> /s/ Derek Smith</u> Derek Smith	Director	August 9, 2016

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement relating to the securities offered by this registration statement.
4.1	Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company, effective as of September 3, 2013 (Incorporated herein by reference to Exhibit 4.1 to the registrant's registration statement on form S-8 filed on September 3, 2013.)
4.2	Third Amended and Restated By-laws of the registrant, effective as of May 16, 2014 (Incorporated herein by reference to Exhibit 3.1 of the registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2014 as filed on August 5, 2014).
4.3	Form of Subordinated Debt Indenture (Filed herewith).
4.4	Form of Senior Debt Indenture (Filed herewith).
4.5*	Form of Certificate of Designation, Powers and Preferences of Preferred Stock.
4.6*	Form of Warrant.
4.7*	Form of Warrant Agreement.
4.8*	Form of Purchase Contract Agreement.
4.9*	Form of Unit Agreement.
4.10*	Form of Depositary Agreement.
4.11*	Form of Depositary Receipt.
5.1	Opinion of Day Pitney LLP (Filed herewith).
5.2	Opinion of Gibson, Dunn & Crutcher LLP (Filed herewith).
12.1	Computation of Ratio of Earnings to Fixed Charges (Filed herewith).
23.1	Consent of Day Pitney LLP (Included in Exhibit 5.1).
23.2	Consent of Gibson, Dunn & Crutcher LLP (Included in Exhibit 5.2).
23.3	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm (Filed herewith).
23.4	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm (Filed herewith).
24.1	Powers of Attorney (Included on the signature pages hereto).
25.1+	Statement of Eligibility of Trustee on Form T-1 with respect to the Subordinated Debt Indenture.
25.2+	Statement of Eligibility of Trustee on Form T-1 with respect to the Senior Debt Indenture.

* To be filed by amendment or as an exhibit to a document to be incorporated by reference herein.

+ To be filed by amendment or pursuant to the Trust Indenture Act of 1939 Section 305(b)(2), if applicable.

EASTMAN KODAK COMPANY

AND

[_____]

as Trustee

Subordinated Debt Securities

INDENTURE

Dated as of _____, 20__

CROSS REFERENCE SHEET *

Provisions of Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939, as amended, and the Indenture dated as of _____, 20__ between Eastman Kodak Company and [_____] as Trustee.

<u>Section of Trust Indenture Act</u>	<u>Section of Indenture</u>
310(a)(1)	6.10
310(a)(2)	6.10
310(a)(3)	N/A
310(a)(4)	N/A
310(a)(5)	6.10
310(b)	6.10
310(c)	N/A
311(a)	6.11
311(b)	6.11
311(c)	N/A
312(a)	4.01
312(b)	4.02(b)
312(c)	4.02(c)
313(a)	6.06
313(b)	6.06
313(c)	6.06
313(d)	6.06
314(a)	3.04; 4.03
314(b)	N/A
314(c)(1)	2.04; 13.06
314(c)(2)	2.04; 13.06
314(c)(3)	N/A
314(d)	N/A
314(e)	13.06
314(f)	N/A
315(a)	6.01(b)
315(b)	6.05
315(c)	6.01(a)
315(d)	6.01(c)
315(e)	5.10
316(a)(1)(A)	5.08
316(a)(1)(B)	5.09
316(a)(2)	N/A
316(b)	5.06
316(c)	2.07
317(a)	5.02
317(b)	3.02; 3.03
318(a)	13.08

* This cross reference sheet shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the Trust Indenture Act of 1939, as amended, which provides that the provisions of Sections 310 through 317 of such Act are a part of and govern every qualified indenture, whether or not physically contained therein.

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 DEFINITIONS	1
SECTION 1.01. <i>Certain Terms Defined</i>	1
ARTICLE 2 SECURITIES	6
SECTION 2.01. <i>Forms Generally</i>	6
SECTION 2.02. <i>Form of Trustee's Certificate of Authentication</i>	6
SECTION 2.03. <i>Amount Unlimited; Issuable in Series</i>	7
SECTION 2.04. <i>Authentication and Delivery of Securities</i>	9
SECTION 2.05. <i>Execution of Securities</i>	10
SECTION 2.06. <i>Certificate of Authentication</i>	10
SECTION 2.07. <i>Denomination and Date of Securities; Payments of Interest</i>	10
SECTION 2.08. <i>Registration, Registration of Transfer and Exchange</i>	12
SECTION 2.09. <i>Trustee's Duties to Monitor Compliance</i>	12
SECTION 2.10. <i>Mutilated, Defaced, Destroyed, Lost and Stolen Securities</i>	13
SECTION 2.11. <i>Cancellation of Securities</i>	13
SECTION 2.12. <i>Temporary Securities</i>	14
SECTION 2.13. <i>Securities in Global Form</i>	14
SECTION 2.14. <i>CUSIP Numbers</i>	15
ARTICLE 3 COVENANTS OF THE COMPANY	15
SECTION 3.01. <i>Payment of Principal and Interest</i>	15
SECTION 3.02. <i>Offices for Payment, Etc.</i>	16
SECTION 3.03. <i>Paying Agents</i>	16
SECTION 3.04. <i>Officers' Certificate</i>	17
SECTION 3.05. <i>Calculation of Original Issue Discount</i>	17
ARTICLE 4 HOLDERS' LISTS AND REPORTS BY THE COMPANY	17
SECTION 4.01. <i>Company to Furnish Trustee Information as to Names and Addresses of Holders</i>	17
SECTION 4.02. <i>Preservation and Disclosure of Holders' Lists</i>	17
SECTION 4.03. <i>Reports by the Company</i>	18
ARTICLE 5 REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT	18
SECTION 5.01. <i>Event of Default Defined; Acceleration of Maturity; Waiver of Default</i>	18
SECTION 5.02. <i>Collection of Indebtedness by Trustee; Trustee May Prove Debt</i>	21
SECTION 5.03. <i>Application of Proceeds</i>	22
SECTION 5.04. <i>Restoration of Rights on Abandonment of Proceedings</i>	23
SECTION 5.05. <i>Limitations on Suits by Holders</i>	23
SECTION 5.06. <i>Unconditional Right of Holders to Institute Certain Suits</i>	24
SECTION 5.07. <i>Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default</i>	24

SECTION 5.08.	<i>Control by Holders</i>	24
SECTION 5.09.	<i>Waiver of Past Defaults</i>	24
SECTION 5.10.	<i>Right of Court to Require Filing of Undertaking to Pay Costs</i>	25
SECTION 5.11.	<i>Suits for Enforcement</i>	25
ARTICLE 6 CONCERNING THE TRUSTEE		25
SECTION 6.01.	<i>Duties of Trustee</i>	25
SECTION 6.02.	<i>Rights of Trustee</i>	27
SECTION 6.03.	<i>Individual Rights of Trustee</i>	28
SECTION 6.04.	<i>Trustee's Disclaimer</i>	29
SECTION 6.05.	<i>Notice of Defaults</i>	29
SECTION 6.06.	<i>Reports by Trustee to Holders</i>	29
SECTION 6.07.	<i>Compensation and Indemnity</i>	29
SECTION 6.08.	<i>Replacement of Trustee</i>	30
SECTION 6.09.	<i>Successor Trustee by Merger</i>	31
SECTION 6.10.	<i>Eligibility; Disqualification</i>	31
SECTION 6.11.	<i>Preferential Collection of Claims Against Company</i>	31
ARTICLE 7 CONCERNING THE HOLDERS		31
SECTION 7.01.	<i>Evidence of Action Taken by Holders</i>	31
SECTION 7.02.	<i>Proof of Execution of Instruments</i>	32
SECTION 7.03.	<i>Holdings to Be Treated as Owners</i>	32
SECTION 7.04.	<i>Securities Owned by Company Deemed Not Outstanding</i>	32
SECTION 7.05.	<i>Right of Revocation of Action Taken</i>	32
ARTICLE 8 SUPPLEMENTAL INDENTURES		33
SECTION 8.01.	<i>Supplemental Indentures Without Consent of Holders</i>	33
SECTION 8.02.	<i>Supplemental Indentures with Consent of Holders</i>	34
SECTION 8.03.	<i>Effect of Supplemental Indenture</i>	35
SECTION 8.04.	<i>Documents to Be Given to Trustee</i>	35
SECTION 8.05.	<i>Notation on Securities in Respect of Supplemental Indentures</i>	36
ARTICLE 9 CONSOLIDATION, MERGER, SALE OR CONVEYANCE		36
SECTION 9.01.	<i>Company May Consolidate, Etc. on Certain Terms</i>	36
SECTION 9.02.	<i>Successor Corporation Substituted</i>	36
SECTION 9.03.	<i>Opinion of Counsel to Trustee</i>	37
ARTICLE 10 SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE; UNCLAIMED FUNDS		37
SECTION 10.01.	<i>Satisfaction and Discharge of Indenture; Defeasance</i>	37
SECTION 10.02.	<i>Conditions to Defeasance</i>	38
SECTION 10.03.	<i>Application of Trust Funds</i>	39
SECTION 10.04.	<i>Repayment to Company</i>	39
SECTION 10.05.	<i>Indemnity for Government Obligations</i>	39
SECTION 10.06.	<i>Reinstatement</i>	39

ARTICLE 11 REDEMPTION OF SECURITIES AND SINKING FUNDS	40
SECTION 11.01. <i>Applicability of Article</i>	40
SECTION 11.02. <i>Notice of Redemption; Partial Redemptions</i>	40
SECTION 11.03. <i>Payment of Securities Called for Redemption</i>	41
SECTION 11.04. <i>Exclusion of Certain Securities from Eligibility for Selection for Redemption</i>	42
SECTION 11.05. <i>Repayment at the Option of the Holders</i>	42
ARTICLE 12 CONVERSION OF SECURITIES	42
SECTION 12.01. <i>Applicability of Article</i>	42
SECTION 12.02. <i>Right of Holders to Convert Securities into Common Shares</i>	43
SECTION 12.03. <i>Issuance of Common Shares on Conversions</i>	43
SECTION 12.04. <i>No Payment or Adjustment for Interest or Dividends</i>	44
SECTION 12.05. <i>Adjustment of Conversion Price</i>	44
SECTION 12.06. <i>No Fractional Shares to Be Issued</i>	48
SECTION 12.07. <i>Notice to Holders of the Securities of a Series Prior to Taking Certain Types of Action</i>	48
SECTION 12.08. <i>Covenant to Reserve Shares for Issuance on Conversion of Securities</i>	49
SECTION 12.09. <i>Compliance with Governmental Requirements</i>	49
SECTION 12.10. <i>Payment of Taxes upon Certificates for Shares Issued upon Conversion</i>	49
SECTION 12.11. <i>Trustee's Duties with Respect to Conversion Provisions</i>	49
SECTION 12.12. <i>Trustee Under No Duty to Monitor Stock Price or Calculations</i>	50
SECTION 12.13. <i>Conversion Arrangement on Call for Redemption</i>	50
ARTICLE 13 MISCELLANEOUS PROVISIONS	51
SECTION 13.01. <i>Incorporators, Shareholders, Officers and Directors of Company Exempt from Individual Liability</i>	51
SECTION 13.02. <i>Provisions of Indenture for the Sole Benefit of Parties and Holders</i>	51
SECTION 13.03. <i>Successors and Assigns of Company Bound by Indenture</i>	51
SECTION 13.04. <i>Notices and Demands on Company, Trustee and Holders</i>	51
SECTION 13.05. <i>Electronic Transmission to the Trustee</i>	52
SECTION 13.06. <i>Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein</i>	52
SECTION 13.07. <i>Payments Due on Saturdays, Sundays and Holidays</i>	53
SECTION 13.08. <i>Conflict of any Provision of Indenture with Trust Indenture Act</i>	53
SECTION 13.09. <i>New York Law to Govern</i>	54
SECTION 13.10. <i>Counterparts</i>	54
SECTION 13.11. <i>Effect of Headings; Gender</i>	54
SECTION 13.12. <i>Waiver of Jury Trial</i>	54
SECTION 13.13. <i>Force Majeure</i>	54
SECTION 13.14. <i>Certain Tax Information</i>	54

ARTICLE 14 SUBORDINATION OF SECURITIES	55
SECTION 14.01. <i>Securities Subordinated to Senior Indebtedness</i>	55
SECTION 14.02. <i>Subrogation</i>	56
SECTION 14.03. <i>Obligation of the Company Unconditional</i>	56
SECTION 14.04. <i>Payments on Securities Permitted</i>	57
SECTION 14.05. <i>Effectuation of Subordination by Trustee</i>	57
SECTION 14.06. <i>Knowledge of Trustee</i>	57
SECTION 14.07. <i>Notices From Holders of Senior Indebtedness</i>	58
SECTION 14.08. <i>Trustee May Hold Senior Indebtedness</i>	58
SECTION 14.09. <i>Rights of Holders of Senior Indebtedness Not Impaired</i>	58
SECTION 14.10. <i>Default in Senior Indebtedness</i>	58
SECTION 14.11. <i>Trustee Not Fiduciary for Holders of Senior Indebtedness</i>	59

INDENTURE

This INDENTURE (this “**Indenture**”), dated as of _____, 20__, is by and between EASTMAN KODAK COMPANY, a New Jersey corporation (the “**Company**”), and [_____] a [_____] as trustee (the “**Trustee**”).

RECITALS

A. The Company has duly authorized the issue from time to time of its debentures, notes or other evidences of indebtedness (the “**Securities**”) to be issued in one or more Series.

B. All things necessary to make this Indenture a valid, legally binding indenture and agreement according to its terms have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed for the equal and ratable benefit of the Holders from time to time of the Securities or of Series thereof as follows.

ARTICLE 1 DEFINITIONS

SECTION 1.01. *Certain Terms Defined.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms (except as herein otherwise expressly provided or unless the context otherwise clearly requires) used in this Indenture that are defined in the Trust Indenture Act or the definitions of which in the Securities Act are referred to in the Trust Indenture Act, including terms defined therein by reference to the Securities Act, shall have the meanings assigned to such terms in the Trust Indenture Act and the Securities Act as in force at the date of this Indenture. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with GAAP. The words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to this Indenture as a whole, as supplemented and amended from time to time, and not to any particular Article, Section or other subdivision. The terms defined in this Article 1 have the meanings assigned to them in this Article 1 and include the plural as well as the singular.

“**Board of Directors**” means either the Board of Directors of the Company or any duly authorized committee of that Board or any duly authorized committee created by that Board.

“**Business Day**”, except as may otherwise be provided in the form of Securities of any particular Series, with respect to any Place of Payment or place of publication means any day, other than a Saturday, Sunday or day on which banking institutions are authorized or required by law or regulation to close in that Place of Payment or place of publication.

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

“**Common Shares**” means the shares of common stock, par value \$0.01 per share, of the Company, collectively as they exist on the date of this Indenture, or any other shares of the Company into which such shares shall be reclassified or changed.

“**Company**” means the Person identified as the “Company” in the first paragraph hereof until a successor company shall have become such pursuant to the applicable provisions hereof, and thereafter “Company” shall mean such successor company.

“**Corporate Trust Office**” means the principal corporate trust office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located at [_____] or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“**covenant defeasance option**” has the meaning specified in Section 10.01(b).

“**defaulted interest**” has the meaning specified in Section 2.07.

“**Depository**”, with respect to Securities of any Series for which the Company shall determine that such Securities will be issued as a Depository Security, means The Depository Trust Company or another clearing agency or any successor registered under the Securities Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to Sections 2.03 and 2.13.

“**Depository Security**”, with respect to any Series of Securities, means 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 this Indenture and pursuant to a resolution of the Board of Directors or an indenture supplemental hereto as contemplated by Section 2.03, which shall be registered as to principal and interest in the name of the Depository or its nominee and shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such Series.

“**Event of Default**” has the meaning specified in Section 5.01.

“**Federal Income Tax**” means United States federal income tax.

“**GAAP**” means such accounting principles as are generally accepted at the time of any computation hereunder.

“**Government Obligations**”, unless otherwise specified pursuant to Section 2.03, means securities that are (i) direct obligations of the United States government or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, the United

States government, the payment of which obligations is unconditionally guaranteed by such government, and that, in either case, are full faith and credit obligations of such government and are not callable or redeemable at the option of the issuer thereof.

“**Holder**”, “**Holder of Securities**”, “**Registered Holder**”, or other similar terms mean the Person in whose name at the time a particular Security is registered in the Security register.

“**Indenture**” means this instrument as originally executed or as it may from time to time be amended or supplemented as herein provided, as so amended or supplemented or both, and shall include the forms and terms of particular Series of Securities established as contemplated by Section 2.03.

“**Internal Revenue Service**” means the United States Internal Revenue Service or a successor entity thereto.

“**legal defeasance option**” has the meaning specified in Section 10.01(b).

“**Nasdaq Market**” has the meaning specified in Section 12.05(e).

“**Officers’ Certificate**” means a certificate signed on behalf of the Company by any two authorized officers of the Company and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 13.06.

“**Opinion of Counsel**” means a written opinion of legal counsel who may be an employee of or counsel to the Company. Each Opinion of Counsel shall include the statements provided for in Section 13.06, if and to the extent required hereby.

“**original issue date**” of any Security means the date set forth as such on such Security.

“**Original Issue Discount Security**” means any Security that 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 5.01.

“**Outstanding**”, when used with reference to Securities of any Series as of any particular time, subject to the provisions of Section 7.04, means all Securities of that Series authenticated and delivered under this Indenture, except:

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

(b) Securities, or portions thereof, for the payment or redemption of which the necessary funds in the required currency shall have been deposited in trust with the Trustee or with any Paying Agent other than the Company, or shall have been set aside, segregated and held in trust by the Company for the holders of such Securities if the Company shall act as its own Paying Agent, provided that if such securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.10, except with respect to any such Security as to which proof satisfactory to the Trustee and the Company is presented that such Security is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company;

(d) Securities converted into other securities of the Company in accordance with or as contemplated by this Indenture; and

(e) Securities with respect to which the Company has effected defeasance as provided in Article 10.

“Paying Agent” means any Person, which may include the Company, authorized by the Company to pay the principal of or interest, if any, on any Security of any Series on behalf of the Company.

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

“Place of Payment”, when used with respect to the Securities of any Series, means the place or places where the principal of and interest on the Securities of that Series are payable as specified pursuant to Section 3.02.

“Preferred Shares” means any shares issued by the Company that are entitled to a preference or priority over the Common Shares upon any distribution of the Company’s assets, whether by dividend or upon liquidation.

“principal” whenever used with reference to the Securities or any Security or any portion thereof shall be deemed to include “and premium, if any.”

“record date” has the meaning specified in Section 2.07.

“Responsible Officer”, when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, senior trust officer, trust officer or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities Act” means the Securities Act of 1933, as amended, as in force at the date as of which this Indenture was originally executed.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended, as in force at the date as of which this Indenture was originally executed.

“**Security**” or “**Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any securities authenticated and delivered under this Indenture.

“**Security register**” has the meaning specified in Section 2.08.

“**Senior Indebtedness**” means (i) the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases or leases of property or assets made as part of any sale and leaseback transaction, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Company is responsible for the payment of, such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings and (vii) obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, and similar arrangements, unless, in each case, the instrument by which the Company incurred, assumed or guaranteed the indebtedness or obligations described in clauses (i) through (vii) hereof expressly provides that such indebtedness or obligation is not senior in right of payment to the Securities.

“**Series**” or “**Series of Securities**” means all Securities of a similar tenor authorized by a particular resolution of the Board of Directors or in one or more indentures supplemental hereto.

“**Subsidiary**” means: (i) a corporation in which the Company and/or one or more Subsidiaries of the Company directly or indirectly owns, at the date of determination, a majority of the capital stock with voting power under ordinary circumstances to elect directors; (ii) a partnership, limited liability company, joint venture or similar entity in which the Company and/or one or more Subsidiaries of the Company directly or indirectly holds, at the date of determination, a majority interest in the equity capital or profits or other similar interests of such entity; or (iii) any other unincorporated Person in which the Company and/or one or more Subsidiaries of the Company directly or indirectly owns at the date of determination (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

“**Trading Day**” has the meaning specified in Section 12.05(e).

“**Trust Indenture Act**”, except as otherwise provided in Sections 8.01 and 8.02, means the Trust Indenture Act of 1939, as amended, as in force at the date as of which this Indenture was originally executed.

“**Trustee**” means the Person identified as the “Trustee” in the first paragraph hereof until a successor Trustee shall have become such pursuant to the applicable provisions hereof, and thereafter “Trustee” shall mean each Person who is then a Trustee hereunder. If at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series means the Trustee with respect to Securities of that Series.

“**vice president**” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title of “vice president.”

**ARTICLE 2
SECURITIES**

SECTION 2.01. *Forms Generally.* The Securities of each Series shall be substantially in such form, including temporary or definitive global form, as shall be established by or pursuant to a resolution of the Board of Directors or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities as evidenced by their execution of the Securities.

The definitive Securities may be printed or reproduced in any other manner, all as determined by the officers executing such Securities as evidenced by their execution of such Securities.

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

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

Dated: _____

_____, as Trustee

By: _____
Authorized Signatory

— or —

_____, as Trustee

By: _____, as
Authentication Agent

By: _____
Authorized Signatory

SECTION 2.03. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more Series. There shall be established in or pursuant to a resolution of the Board of Directors and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any Series:

(a) the title of the Securities of the Series (including CUSIP numbers), which shall distinguish the Securities of the Series from all other Securities issued by the Company;

(b) any limit upon the aggregate principal amount of the Securities of the Series that may be authenticated and delivered under this Indenture, except for Securities authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, other Securities of the Series pursuant to Section 2.08, 2.10, 2.12, 8.05 or 11.03;

(c) the price at which the Securities of the Series will be issued;

(d) if other than 100% of the principal amount, the portion of the principal amount payable upon maturity of the Securities of the Series;

(e) the date or dates on which the principal of the Securities of the Series is payable or the method of determination thereof;

(f) the rate or rates, which may be fixed or variable, or the method or methods of determination thereof, at which the Securities of the Series shall bear interest (including any interest rates applicable to overdue payments), if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable, the record dates for the determination of Holders to whom interest is payable and the dates on which any other amounts, if any, will be payable;

(g) the place or places where the principal of, premium and other amounts, if any, and interest, if any, on Securities of the Series shall be payable if other than as provided in Section 3.02;

(h) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

(i) the obligation, if any, of the Company to redeem, purchase or repay Securities of the Series whether pursuant to any sinking fund or analogous provisions or pursuant to other provisions set forth therein or at the option of a Holder thereof and the price or prices at which and the period or periods within which and the terms and

conditions upon which Securities of the Series shall be redeemed, purchased or repaid, in whole or in part;

(j) the denominations in which Securities of the Series shall be issuable;

(k) the form of the Securities, including such legends as required by law or as the Company deems necessary or appropriate and the form of any temporary global security that may be issued;

(l) whether, and under what circumstances, the Securities of any Series shall be convertible into other securities of the Company and, if so, the terms and conditions upon which such conversion will be effected, including the initial conversion price or rate, the conversion period and other provisions in addition to or in lieu of those described herein;

(m) whether there are any authentication agents, Paying Agents, transfer agents or registrars with respect to the Securities of such Series;

(n) whether the Securities of such Series are to be issuable in whole or in part by one or more global notes registered in the name of a Depository or its nominee;

(o) the ranking of the Securities of such Series as senior debt securities or subordinated debt securities;

(p) if other than U.S. dollars, the currency or currencies (including composite currencies or currency units) in which the Securities of any Series may be purchased and in which payments on the Securities of such Series will be made (which currencies may be different for payments of principal, premium or other amounts, if any, and/or interest, if any);

(q) if the Securities of any Series will be secured by any collateral, a description of the collateral and the terms and conditions of the security and realization provisions;

(r) the provisions relating to any guarantee of the Securities of any Series, including the ranking thereof;

(s) the ability, if any, to defer payments of principal, interest, or other amounts; and

(t) any other specific terms or conditions of the Securities of any Series, including any additional Events of Default or covenants provided for with respect to the Securities of such Series, and any terms that may be required by or advisable under applicable laws or regulations.

All Securities of any one Series shall be substantially identical except as to denomination and except as otherwise may be provided in or pursuant to such resolution of the Board of Directors or in any such indenture supplemental hereto. The Securities of any one Series need

not be issued at the same time, and unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series.

SECTION 2.04. *Authentication and Delivery of Securities.* 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, and the Trustee shall thereupon authenticate and make available for delivery such Securities to or upon the written order of the Company, signed by both (y) the chairman of its Board of Directors, or its president or any vice president, and (z) its treasurer or any assistant treasurer or its secretary or any assistant secretary. At the time of the authentication of a Series of Securities, or the first authentication of a Series of Securities that provides for the issuance of Securities of that Series from time to time, and accepting the additional responsibilities under this Indenture in relation to any such Series of Securities, the Trustee shall be provided with and subject to Section 6.01 shall be fully protected in relying upon:

(a) a copy of any resolution or resolutions of the Board of Directors relating to such Series, in each case certified by the secretary or an assistant secretary of the Company;

(b) a supplemental indenture, if any;

(c) an Officers' Certificate setting forth the form and terms of the Securities of such Series as required pursuant to Sections 2.01 and 2.03, respectively, and prepared in accordance with Section 13.06; and

(d) an Opinion of Counsel, prepared in accordance with Section 13.06, which shall state:

(i) that the form or forms and terms of such Series of Securities have been established by or pursuant to a resolution of the Board of Directors or by a supplemental indenture as permitted by Sections 2.01 and 2.03 in conformity with the provisions of this Indenture;

(ii) that such Series of Securities has been duly authorized and, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such opinion of counsel, the Securities of such Series will constitute valid and binding obligations of the Company enforceable, in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(iii) that all conditions precedent to the execution and delivery by the Company of such Series of Securities have been complied with.

The Trustee shall have the right to decline to authenticate and deliver any Series of Securities under this Section 2.04 if the issue of such Series of Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under this Indenture in a manner not reasonably acceptable to the Trustee.

SECTION 2.05. *Execution of Securities.* The Securities shall be signed on behalf of the Company by both (a) the chairman of its Board of Directors or its president or any vice president and (b) its treasurer or any assistant treasurer or its secretary or any assistant secretary. Such signatures may be the manual or facsimile signatures of such officers. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities. Typographical and other minor errors or defects in any such reproduction of the seal or any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

In case any officer of the Company who shall have signed any of the Securities shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed such Security had not ceased to be such officer of the Company. Any Security may be signed on behalf of the Company by such individuals as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution and delivery of this Indenture any such individual was not such an officer.

SECTION 2.06. *Certificate of Authentication.* Only such Securities as shall bear thereon a certificate of authentication substantially in the form set forth in Section 2.02 and executed by the Trustee by the manual signature of one of its authorized signatories shall be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder.

SECTION 2.07. *Denomination and Date of Securities; Payments of Interest.* The Securities shall be issuable in denominations as shall be specified as contemplated by Section 2.03. In the absence of any such specification with respect to the Securities of any Series, Securities shall be issuable in denominations of \$1,000 and any integral multiple thereof, and interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Securities shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by its execution and authentication thereof.

Each Security shall be dated the date of its authentication.

Unless otherwise provided as contemplated by Section 2.03, interest on any Security that is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid

to the person in whose name that Security (or one or more predecessor securities) is registered at the close of business on the regular record date for the payment of such interest.

The term “**record date**” as used with respect to any interest payment date (except for a date for payment of defaulted interest) means the date specified as such in the terms of the Securities of any particular Series or, if no such date is so specified, the close of business on the fifteenth day preceding such interest payment date, whether or not such record date is a Business Day.

Any interest on any Security of any Series that is payable but not punctually paid or duly provided for (“**defaulted interest**”) on any interest payment date shall forthwith cease to be payable to the Registered Holder on the relevant record date by virtue of such Holder having been a Holder on such record date. Such defaulted interest may be paid by the Company, at its election in each case, as provided in clause (a) or clause (b) below:

(a) The Company may elect to make payment of any defaulted interest to the persons in whose names any such Securities (or their respective predecessor Securities) are registered at the close of business on a special record date for the payment of such defaulted interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security of such Series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee funds 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 funds when deposited shall be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this clause (a). Thereupon the Trustee shall fix a special record date for the payment of such defaulted interest in respect of Securities of such Series, which shall be not more than 15 nor less than ten days prior to the date of the proposed payment and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Trustee promptly shall 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 thereof to be mailed, first class postage prepaid, to each Registered Holder at his address as it appears in the Security register, not less than ten days prior to such special record date. Notice of the proposed payment of such defaulted interest and the special record date therefor having been mailed as aforesaid, such defaulted interest in respect of Securities of such Series shall be paid to the persons in whose names such Securities (or their respective predecessor Securities) are registered on such special record date and such defaulted interest shall no longer be payable pursuant to the following clause (b).

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

Subject to the foregoing provisions of this Section 2.07, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 2.08. *Registration, Registration of Transfer and Exchange.* The Company will cause to be kept at each office or agency to be maintained for the purpose as provided in Section 3.02 a register or registers (the “**Security register**”) in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration and the registration of transfer of the Securities. The Trustee is hereby appointed Security registrar for purposes of registering, and registering transfers of, the Securities.

Upon surrender for registration of transfer of any Security of any Series at any such office or agency to be maintained for the purpose as provided in Section 3.02, the Company shall execute, and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees, a new Security or Securities of the same Series and of like tenor and containing the same terms (other than the principal amount thereof, if more than one Security is executed, authenticated and delivered with respect to any security so presented, in which case the aggregate principal amount of the executed, authenticated and delivered Securities shall equal the principal amount of the Security presented in respect thereof) and conditions.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of an amount sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 2.12, 8.05 or 11.03 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Security during the 15-day period prior to the day of mailing of the relevant notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, the portion thereof not redeemed.

SECTION 2.09. *Trustee’s Duties to Monitor Compliance.* The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any

interest in any Security (including any transfers between or among depository participants or beneficial owners of interests in any global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.10. *Mutilated, Defaced, Destroyed, Lost and Stolen Securities.* Unless otherwise specified as contemplated by Section 2.03 of any Series, in case any temporary or definitive Security shall become mutilated or defaced or be destroyed, lost or stolen, the Company shall execute, and upon the written request of any officer of the Company, the Trustee shall authenticate and make available for delivery a new Security of the same Series and of like tenor and principal amount and with the same terms and conditions, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security or in lieu of and substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of any substitute Security, the Company may require the payment of an amount sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including the reasonable fees and expenses of the Trustee, connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company, instead of issuing a substitute Security, may pay or authorize the payment of the same without surrender thereof except in the case of a mutilated or defaced Security. The applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as any of them may require to save each of them harmless. In every case of destruction, loss or theft, the applicant also shall furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to the provisions of this Section 2.10 by virtue of the fact that any Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of and shall be subject to all the limitations of rights set forth in this Indenture equally and proportionately with any and all other Securities duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies, notwithstanding any law or statute to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.11. *Cancellation of Securities.* All Securities surrendered for payment, redemption, registration of

transfer or exchange, or for credit against any payment in respect of a sinking or analogous fund, if surrendered to the Company or any agent of the Company or the Trustee shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled by it in accordance with its customary procedures; and no Securities shall be issued in lieu thereof except as expressly permitted by the provisions of this Indenture. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold and all Securities so delivered shall be promptly cancelled by the Trustee. The Trustee shall return cancelled Securities held by it to the Company, upon written request. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation.

SECTION 2.12. *Temporary Securities.* Pending the preparation of definitive Securities for any Series, the Company may execute and the Trustee shall authenticate and make available for delivery temporary Securities for such Series, which may be printed, typewritten or otherwise reproduced, in each case in form reasonably acceptable to the Trustee. Temporary Securities of any Series may be issued in any authorized denomination and substantially in the form of the definitive Securities of such Series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the reasonable concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such Series and thereupon temporary Securities of such Series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for that purpose pursuant to Section 3.02, and the Trustee shall authenticate and make available for delivery in exchange for such temporary Securities of such Series a like aggregate principal amount of definitive Securities of the same Series of authorized denominations. Until so exchanged, the temporary Securities of any Series shall be entitled to the same benefits under this Indenture as definitive Securities of such Series.

SECTION 2.13. *Securities in Global Form.* If Securities of a Series are issuable in global form, as specified as contemplated by Section 2.03, such global form of Security shall represent such of the Outstanding Securities of such Series as shall be specified therein and may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby may be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified therein or in the Company order to be delivered to the Trustee pursuant to Section 2.04. Subject to the provisions of Section 2.04, the Trustee shall deliver and redeliver any Security in definitive global form in the manner and upon written instructions given by the Person or Persons specified therein or in the applicable Company order. If a Company order pursuant to Section 2.04 has been, or simultaneously is, delivered, any

instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing.

Unless otherwise specified as contemplated by Section 2.03, payment of principal of and any interest on any Security in definitive global form shall be made to the Person or Persons specified therein.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of or interest on such Security and for all other purposes whatsoever, whether or not such Security shall be overdue, and neither the Company, the Trustees nor any agent of the Company or the Trustee will be affected by notice to the contrary.

If The Depository Trust Company is at any time unwilling or unable to continue as Depository or if at any time The Depository Trust Company ceases to be a clearing agency registered under the Securities Exchange Act if so required by applicable law or regulation, and, in either case, a successor Depository is not appointed within 90 days, certificated Securities will be issued in exchange for the global Securities. In addition, the Company may determine, at any time and subject to the procedures of The Depository Trust Company, not to have any Securities represented by one or more global Securities, and, in such event, shall issue individual Securities in certificated form in exchange for the relevant global Securities. Beneficial interests in global Securities will be exchangeable for individual Securities in certificated form in the event of a default or an Event of Default, upon prior written notice to the Trustee by or on behalf of The Depository Trust Company or at the written request of the owner of such beneficial interests, in each case, in accordance with the terms hereof. In any of the foregoing circumstances, an owner of a beneficial interest in a global Security shall be entitled to physical delivery of individual Securities in certificated form of like tenor and rank, equal in principal amount to such beneficial interest, and to have such Securities in certificated form registered in its name.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by The Depository Trust Company or any other Depository.

SECTION 2.14. *CUSIP Numbers*. The Company in issuing the Securities may use CUSIP numbers if then generally in use and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders. Any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities. No such redemption shall be affected by any defect in or omission of such numbers. The Company promptly will notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3 COVENANTS OF THE COMPANY

SECTION 3.01. *Payment of Principal and Interest*. The Company covenants and agrees for the benefit of each

particular Series of Securities that it will duly and punctually pay or cause to be paid the principal of, and interest on, each of the Securities of such Series in accordance with the terms of the Securities of such Series and this Indenture.

SECTION 3.02. *Offices for Payment, Etc.* So long as any of the Securities remain outstanding, the Company will maintain for each Series an office or agency where the Securities may be presented for payment or conversion, where the Securities may be presented for registration of transfer and for exchange and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. In case the Company shall fail to so designate or maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the Corporate Trust Office. Unless otherwise specified pursuant to Section 2.03, the Trustee is hereby appointed Paying Agent.

SECTION 3.03. *Paying Agents.* Whenever the Company shall appoint a Paying Agent other than the Trustee with respect to the Securities of any Series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Agent shall agree with the Trustee, subject to the provisions of this Section 3.03:

(a) that it will hold all amounts received by it as such Paying Agent for the payment of the principal of or interest on the Securities of such Series in trust for the benefit of the Holders of the Securities of such Series and, upon the occurrence of an Event of Default and upon the written request of the Trustee, pay over all such amounts received by it to the Trustee; and

(b) that it will give the Trustee notice of any failure by the Company or by any other obligor on the Securities of such Series to make any payment of the principal of or interest on the Securities of such Series when the same shall be due and payable.

On or prior to each due date of the principal of or interest on the Securities of such Series, the Company will deposit with the Paying Agent sufficient funds to pay such principal or interest so becoming due and, unless such Paying Agent is the Trustee, notify the Trustee of any failure to take such action.

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

At any time, for the purpose of obtaining a satisfaction and discharge with respect to one or more or all Series of Securities or for any other reason, the Company may pay or cause to be paid to the Trustee all amounts held in trust for any such Series by the Company or any Paying Agent, such amounts to be held by the Trustee in trust pursuant to this Indenture.

The agreement to hold amounts in trust as provided in this Section 3.03 is subject to the provisions of Sections 10.03 and 10.04.

SECTION 3.04. *Officers' Certificate.* The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate indicating whether the officers signing such Officers' Certificate on behalf of the Company know of any default with respect to the Company's compliance with all conditions or covenants under the Securities of any Series. The Company also shall deliver to the Trustee, within 30 days after obtaining knowledge of the occurrence thereof, written notice of any Event of Default with respect to the Securities of any Series, the status thereof and what action the Company is taking or proposes to take in respect thereof.

SECTION 3.05. *Calculation of Original Issue Discount.* The Company shall file with the Trustee, within 30 days after the end of each calendar year, a written notice specifying the amount of original issue discount, if any, including daily rates and accrual periods, accrued on each Series of Outstanding Original Issue Discount Securities as of the end of such year.

ARTICLE 4 HOLDERS' LISTS AND REPORTS BY THE COMPANY

SECTION 4.01. *Company to Furnish Trustee Information as to Names and Addresses of Holders.* Unless otherwise contemplated by Section 2.03 for the Securities of any Series, the Company will furnish or cause to be furnished to the Trustee a list in such form as the Trustee reasonably may require of the names and addresses of the Holders of the Securities of each Series:

- (a) semiannually, and not more than 15 days after each record date for the payment of interest on such Securities, as of such record date; and
 - (b) at such other times as the Trustee reasonably may request in writing, within 30 days after receipt by the Company of any such request, such list to be as of a date not more than 15 days prior to the time such information is furnished;
- provided that, if the Trustee shall be the Security registrar for such Series, such list shall not be required to be furnished.

SECTION 4.02. *Preservation and Disclosure of Holders' Lists.*

- (a) The Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 4.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) The rights of the Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, will be as provided by Section 312(b) of the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them will be held accountable by reason of any disclosure of information as to names and addresses of Holders made in accordance with the Trust Indenture Act.

SECTION 4.03. *Reports by the Company.* So long as any Securities are outstanding, the Company will file with the Trustee, within 15 days after it files them with the Commission, copies of its annual report and the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act. The Company shall be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the Commission via EDGAR (or any successor electronic delivery procedure). The Company shall also comply with the other provisions of Section 314(a) of the Trust Indenture Act.

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

ARTICLE 5 REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

SECTION 5.01. *Event of Default Defined; Acceleration of Maturity; Waiver of Default.* "**Event of Default**", with respect to Securities of any Series, means, unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, any one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) unless it is either inapplicable to a particular Series or it is specifically deleted or modified in or pursuant to the supplemental indenture or resolution of the Board of Directors establishing such Series of Securities or in the form of Security for such Series:

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

(b) default in the payment of all or any part of the principal of any of the Securities of such Series as and when the same shall become due and payable, either at maturity, upon any redemption or repurchase, by declaration or otherwise;

(c) default in the performance or breach of any covenant or warranty contained in the Securities of such Series or in this Indenture (other than (x) the failure to comply with any covenant or agreement contained in Section 314(a)(1) of the Trust Indenture Act or Section 4.03 or (y) a default in the performance or breach of a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 5.01 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more Series of Securities other than that Series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that Series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(d) the Company (i) pursuant to or within the meaning of any bankruptcy law commences a voluntary case, consents to the entry of an order for relief against it in an involuntary case, consents to the appointment of a custodian of it or for any substantial part of its property, or makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency; or (ii) a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against the Company in an involuntary case, appoints a custodian of the Company or for any substantial part of its property, or orders the winding up or liquidation of the Company or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 90 days; or

(e) any other Event of Default (including Events of Default replacing or supplementing the foregoing) provided with respect to Securities of such Series in the supplemental indenture or resolution of the Board of Directors establishing such Series.

Any failure to perform, or breach of, any covenant or agreement of the Company in respect of the Securities of such Series contained in Section 314(a)(1) of the Trust Indenture Act or Section 4.03 shall not be a default or an Event of Default. Remedies against the Company for any such failure or breach will be limited to liquidated damages as described in the following sentence, and Holders shall not have any right to accelerate the maturity of the Securities of such Series as a result of any such failure or breach. Instead, if there is such a failure or breach of the Company's obligation under Section 314(a)(1) of the Trust Indenture Act or Section 4.03 and continuance of such failure or breach for a period of 90 days after the date on which there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of all Series affected thereby, a written notice specifying such failure or breach and requiring it

to be remedied and stating that such notice is a "Notice of Reporting Noncompliance" hereunder, the Company will pay liquidated damages to all Holders of Securities of such Series, at a rate per year equal to 0.25% of the principal amount of such Securities from the 90th day following such notice to and including the 150th day following such notice and at a rate per year equal to 0.5% of the principal amount of such Securities from and including the 151st day following such notice, until such failure or breach is cured. Any such liquidated damages shall be payable in the same manner and on the same dates as the stated interest payable on the Securities of such Series. In the event that the Company is required to pay such liquidated damages, the Company shall provide a written notice to the Trustee (and if the Trustee is not the paying agent, the paying agent) no later than five Business Days prior to the payment date for the payment of such liquidated damages setting forth the amount of such liquidated damages to be paid by the Company on such payment date and directing the Trustee (or, if the Trustee is not the paying agent, the paying agent) to make such payment to the extent it receives funds from the Company to do so. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether such liquidated damages are payable, or with respect to the nature, extent or calculation of the amount of liquidated damages owed.

If an Event of Default occurs under clause (d) above, the principal of and interest on the Securities of each Outstanding Series shall become immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, if an Event of Default (other than an Event of Default occurring as a result of clause (d)) with respect to the Securities of any Series shall have occurred and be continuing, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such Series then Outstanding by notice to the Company may declare the principal amount of all the Securities of such Series and accrued and unpaid interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable. This provision, however, is subject to the condition that if at any time after the principal of the Securities of such Series shall have been so declared due and payable, and before any judgment or decree for the payment of the amounts due shall have been obtained or entered as hereinafter provided, the Company shall have paid or deposited with the Trustee sufficient funds to pay all matured installments of interest, if any, upon all the Securities of such Series and the principal of the Securities of such Series that shall have become due other than by such acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, upon overdue installments of interest, at the rate borne by the Securities of such Series to the date of such payment or deposit) and all other defaults under this Indenture, other than the nonpayment of the principal of Securities of such Series that shall have become due by such acceleration, shall have been remedied, then and in every such case the Holders of a majority in aggregate principal amount at maturity of the Securities of such Series then Outstanding, by written notice to the Company and to the Trustee for the Securities of such Series, may waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

Subject to the provisions of Article 6, in case an Event of Default with respect to the Securities of any Series shall occur and be continuing, the Trustee shall not be under any

obligation to exercise any of the trusts or powers vested in it hereby at the request or direction of any Holder of such Series, unless such Holder shall have offered to such Trustee security or indemnity reasonably satisfactory to it.

Additional terms and conditions with respect to the rights of Holders of the Securities of a particular Series (including as to rights to rescind an acceleration of the payment of principal and interest) and the rights and obligations of the Trustee, in each case, in connection with a default or Event of Default, may be specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 5.02. *Collection of Indebtedness by Trustee; Trustee May Prove Debt.* If the Company shall fail to pay any installment of interest on any of the Securities of any Series when such interest shall have become due and payable, and such default shall have continued for a period of 30 days, or shall fail to pay the principal of any of the Securities of any Series when the same shall have become due and payable, whether upon maturity of the Securities of such Series or upon any redemption or by declaration or otherwise, then upon demand of the Trustee for the Securities of such Series the Company will pay to the Trustee for the Securities of such Series for the benefit of the Holders of the Securities of such Series the whole amount that then shall have become due and payable on all Securities of such Series for principal of or interest, as the case may be (with interest to the date of such payment upon the overdue principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series) and such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to and expenses incurred by the Trustee and its respective agents, attorneys and counsel.

Until such demand is made by the Trustee, the Company may pay the principal of and interest on the Securities of any Series to the persons entitled thereto, whether or not the principal of and interest on the Securities of such Series are overdue.

If the Company shall fail to pay such amounts upon such demand, the Trustee for the Securities of such Series, 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 amounts so due and unpaid. In any such case, the Trustee may prosecute any such action or proceedings to judgment or final decree and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company, wherever situated, the amounts adjudged or decreed to be payable.

If (i) there shall be pending proceedings relative to the Company under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or other similar law, (ii) a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or its property or (iii) any other comparable judicial proceedings relative to the Company under the Securities of any Series, or to the creditors or property of the Company, shall be pending, and irrespective of whether the principal of any Securities shall then be due and payable or whether

the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Securities of any Series and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to, and expenses incurred by, the Trustee, and its agents, attorneys and counsel) and of the Holders allowed in any judicial proceedings relative to the Company, or to the creditors or property of the Company; and

(b) to collect and receive any funds or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders and of the Trustee on their behalf; and any trustee, receiver, or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee for the Securities of such Series, and, in the event that such Trustee shall consent to the making of payments directly to the Holders, to pay to such Trustee such amounts as shall be sufficient to cover reasonable compensation to and expenses incurred by such Trustee and its respective agents, attorneys and counsel and all other amounts due to such Trustee pursuant to Section 6.07.

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

All rights of action and of asserting claims under this Indenture or under any of the Securities may be enforced by the Trustee for the Securities of such Series without the possession of any of the Securities of such Series or the production thereof at any trial or other proceedings relative thereto. Any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Securities in respect of which such action was taken.

In any proceedings brought by the Trustee for the Securities of such Series, the Trustee shall be held to represent all the Holders of the Securities in respect of which such action was taken, and it shall not be necessary to make any Holders of such Securities parties to any such proceedings.

SECTION 5.03. *Application of Proceeds.* Any amounts collected by the Trustee for the Securities of such Series pursuant to this Article 5 in respect of the Securities of any Series shall be applied in the following order at the date or dates fixed by such Trustee and, in case of the distribution of such amounts on account of principal or interest, upon presentation of the several Securities in respect of which amounts have been collected and stamping or otherwise noting thereon the payment, or

issuing Securities of such Series in reduced principal amounts in exchange for the presented Securities of like Series if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses applicable to such Series in respect of which amounts have been collected, including reasonable compensation to and expenses incurred by the Trustee, each predecessor Trustee and their respective agents and attorneys and all other amounts due to the Trustee pursuant to Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of and interest on the Securities of such Series in respect of which amounts have been collected, such payments to be made ratably to the persons entitled thereto, without discrimination or preference, according to the amounts then due and payable on such Securities and any such debt for principal and interest; and

THIRD: To the payment of the remainder, if any, to the Company or as a court of competent jurisdiction may direct.

SECTION 5.04. *Restoration of Rights on Abandonment of Proceedings.* If the Trustee for the Securities of any Series shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Company and the Trustee, subject to the determination in any such proceeding, shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

SECTION 5.05. *Limitations on Suits by Holders.* 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 action or proceeding at law or in equity or in bankruptcy or otherwise with respect to this Indenture, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official 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 and the Holders of not less than 25% in aggregate principal amount of the Securities of such Series then Outstanding shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee security or indemnity satisfactory to it 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 security or indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by Holders of a majority in principal amount of the Securities of such Series then Outstanding; it being understood and intended, and being expressly covenanted by the Holder of every Security with every other Holder of a Security and the Trustee, that no one or more Holders of Securities of any Series shall have any right in any manner whatever, by virtue or by availing of any provision of this Indenture, to affect, disturb or prejudice the rights of any other such Holder of 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 the applicable Series.

SECTION 5.06. *Unconditional Right of Holders to Institute Certain Suits.* Notwithstanding any provision in this Indenture and any provision of any Security of such Series, the right of any Holder of any Security to receive payment of the principal of and (subject to Section 2.07) interest on such Security at the respective rates, in the respective amount on or after the respective due dates expressed in such Security of such Series, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 5.07. *Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default.* Except as provided in Sections 2.10 and 5.05, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder 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 Event of Default or an acquiescence therein. Subject to Section 5.05, every power and remedy given by this Indenture or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or the Holders.

SECTION 5.08. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Securities of each Series affected at the time Outstanding 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 by this Indenture on the Trustee with respect to the Securities of such Series. The Trustee shall have the right to decline to follow any such direction if (i) such direction shall conflict with law or the provisions of this Indenture or any indenture supplemental hereto, (ii) the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability or (iii) the Trustee in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities of all Series so affected not joining in the giving of said direction, it being understood that the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

SECTION 5.09. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Securities of such Series at the time Outstanding, on behalf of the Holders of all the Securities of such

Series, may waive any past default hereunder or its consequences, except a default in the payment of the principal of or interest on any of the Securities of such Series.

Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 5.10. *Right of Court to Require Filing of Undertaking to Pay Costs.* Any court in its discretion may require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit. Any such court in its discretion may 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. The provisions of this Section 5.10 shall not apply, however, to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders of any Series holding in the aggregate more than 10% in aggregate principal amount of the Securities of such Series or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the due date expressed in such Security.

SECTION 5.11. *Suits for Enforcement.* If an Event of Default has occurred, has not been waived and is continuing, the Trustee in its discretion may 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 this 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.

ARTICLE 6 CONCERNING THE TRUSTEE

SECTION 6.01. *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing with respect to the Securities of any Series, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default with respect to the Securities of any Series:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, 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 examine the certificates and opinions 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).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 6.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.08.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 6.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Amounts held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any amounts received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 6.02. *Rights of Trustee.*

(a) The Trustee may conclusively rely on, and shall be fully protected in relying upon, any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) Subject to the provisions of Section 6.01(c), the Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(d) Before the Trustee acts or refrains from acting, 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, suffered or omitted by it hereunder in good faith and in reliance thereon in accordance with such advice or Opinion of Counsel.

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

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

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, Officers' Certificate or other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(i) The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Company, except as otherwise set forth herein, but the Trustee may require of the Company full information and advice as to the performance of the covenants, conditions and agreements contained herein and shall be entitled in connection herewith to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default.

(k) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) 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 by the Trustee to act hereunder.

(m) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a written order of the Company and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution of the Board of Directors.

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

(o) The Trustee shall not be deemed to have notice of an Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such an Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

SECTION 6.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, registrar or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 6.10 and 6.11.

SECTION 6.04. *Trustee's Disclaimer.* The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities. The Trustee shall not be accountable for the Company's use of the proceeds from the Securities and shall not be responsible for any statement in any registration statement for the Securities filed with the Commission under the Securities Act (other than its Statement of Eligibility on Form T-1) or in the Indenture (other than its eligibility under Section 6.10) or the Securities (other than its certificate of authentication).

SECTION 6.05. *Notice of Defaults.* If a default occurs and is continuing with respect to the Securities of any Series and is known to the Trustee, the Trustee shall mail to each Holder of the Securities of such Series notice of such default within 90 days after the occurrence of such default. Except in the case of a default in the payment of the principal of, premium, if any, or interest on the Securities of any Series, including payments pursuant to the redemption provisions of the Securities of such Series, the Trustee may withhold notice if and so long as a committee of its Responsible Officers in good faith determines that withholding such notice is in the interests of Holders of such Series.

SECTION 6.06. *Reports by Trustee to Holders.* So long as the Securities of any Series are Outstanding, within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Holder of any such Series and each other Person specified in Section 313(c) of the Trust Indenture Act a brief report dated as of such May 15 that complies with Section 313(a) of the Trust Indenture Act to the extent required thereby. The Trustee also shall comply with Section 313(b) of the Trust Indenture Act.

The Trustee will file a copy of each report, at the time of its mailing to Holders of any Series, with the Commission and each securities exchange on which the Securities of any Series are listed. The Company promptly will notify the Trustee whenever the Securities of any Series become listed on any securities exchange and of any delisting thereof.

SECTION 6.07. *Compensation and Indemnity.* The Company:

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

(b) will reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, including the reasonable compensation and expenses of its agents and counsel, except to the extent any such compensation or expense may be attributable to its own negligence or willful misconduct; and

(c) will indemnify the Trustee for, and to hold it harmless against, any loss, liability, claim, damage or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), arising out of or in connection

with the acceptance or administration of this trust or the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against or investigating any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section, except to the extent that any such loss, liability, damage, claim or expense is due to its own negligence or willful misconduct.

As security for the performance of the Company's obligations under this Section 6.07, the Trustee shall have a lien prior to the Securities on all funds or property held or collected by the Trustee, except for those funds that are held in trust to pay the principal of or interest, if any, on particular Securities.

"Trustee" for purpose of this Section 6.07 includes any predecessor trustee; provided that the negligence or willful misconduct of any Trustee shall not be attributable to any other Trustee.

The Company's payment obligations pursuant to this Section 6.07 shall constitute additional indebtedness hereunder and shall survive the discharge and termination of this Indenture and resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a default specified in Section 5.01(d), such expenses, including reasonable fees and expenses of counsel, are intended to constitute expenses of administration under bankruptcy law.

SECTION 6.08. *Replacement of Trustee.* The Trustee may resign at any time with respect to Securities of one or more Series by so notifying the Company. No such resignation, however, shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 6.08. The Holders of a majority in aggregate principal amount of the Outstanding Securities of any Series may remove the Trustee with respect to such Series by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 6.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more Series, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee with respect to the Securities of such Series.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture with respect to the Securities of such Series. The successor Trustee

shall mail a notice of its succession to Holders so affected. The retiring Trustee shall promptly transfer all funds and property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 6.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Outstanding Securities of each affected Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 6.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

SECTION 6.09. *Successor Trustee by Merger.* If the Trustee consolidates with, merges or converts into or transfers all or substantially all its corporate trust business or assets to another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

SECTION 6.10. *Eligibility; Disqualification.* The Trustee shall at all times satisfy the requirements of Section 310(a)(1) of the Trust Indenture Act. The Trustee shall have a combined capital and surplus of at least \$150,000,000 as set forth in its most recent published annual report of condition. Neither the Company nor any person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee hereunder. The Trustee shall comply with Section 310(b) of the Trust Indenture Act; provided, however, that there shall be excluded from the operation of Section 310(b)(1) of the Trust Indenture Act any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the Trust Indenture Act are met.

SECTION 6.11. *Preferential Collection of Claims Against Company.* The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated therein.

ARTICLE 7 CONCERNING THE HOLDERS

SECTION 7.01. *Evidence of Action Taken by Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by a specified percentage in principal amount of the Holders of any or all Series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Holders in person or by agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument

or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and, subject to Sections 6.01 and 6.02, conclusive in favor of the Trustee and the Company, if made in the manner provided in this Article 7.

(b) The ownership of Securities shall be proved by the Security register.

SECTION 7.02. *Proof of Execution of Instruments.* Subject to Sections 6.01 and 6.02, the execution of any instrument by a Holder or his agent or proxy may be proved in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

SECTION 7.03. *Holders to Be Treated as Owners.* The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name any Security shall be registered upon the Security register for such Series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest on such Security and for all other purposes. Neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All payments made to any such person, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for amounts payable upon any such Security.

SECTION 7.04. *Securities Owned by Company Deemed Not Outstanding.* In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all Series have concurred in any direction, consent or waiver under this Indenture, Securities that are owned by the Company or any other obligor on the Securities with respect to which such determination is being made, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities with respect to which such determination is being made, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. For the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities.

SECTION 7.05. *Right of Revocation of Action Taken.* At any time prior to the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any Series specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the

evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article 7, may 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 Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of any Series specified in this Indenture in connection with such action shall be binding upon the Company, the Trustee and the Holders of all the Securities affected by such action. This Section shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

ARTICLE 8 SUPPLEMENTAL INDENTURES

SECTION 8.01. *Supplemental Indentures Without Consent of Holders.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company, when authorized by a resolution of its Board of Directors, and the Trustee for the Securities of any Series from time to time and at any time may enter into an indenture or indentures supplemental hereto, which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof, in form satisfactory to such Trustee, for one or more of the following purposes:

(a) cure any ambiguity, omission, defect or inconsistency in the Indenture or in any supplemental indenture that 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 or under any supplemental indenture as the Board of Directors may deem necessary or desirable and that shall not materially and adversely affect the interests of the Holders of such Series of Securities;

(b) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company pursuant to Article 9;

(c) to convey, transfer, assign, mortgage or pledge any property or assets to the Trustee as security for the Securities of one or more Series;

(d) to add guarantees with respect to the Securities of any Series or to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the Holders of Securities of any Series and, if such additional covenants are to be for the benefit of less than all the Series of Securities, stating that such covenants are being added solely for the benefit of such Series, or to release any guarantee where such release is permitted by the applicable supplemental indenture;

(e) to establish the form or terms of Securities of any Series as permitted by Sections 2.01 and 2.03;

(f) to make any changes to comply with the Trust Indenture Act, or any amendment thereto, or to comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act; or

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.08.

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

Any supplemental indenture authorized by the provisions of this Section 8.01 may be executed without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 8.02.

SECTION 8.02. *Supplemental Indentures with Consent of Holders.* Except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series, with the consent (evidenced as provided in Article 7) of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each Series affected by such supplemental indenture, the Company (when authorized by a resolution of its Board of Directors) and the Trustee for such Series of Securities, from time to time and at any time, may enter into an indenture or indentures supplemental hereto, which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such Series. Except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series, no such supplemental indenture, however, shall, without the consent of each affected Holder of Securities of such Series:

(a) change the stated maturity date of any Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of any interest thereon, or reduce any amount payable on redemption or repurchase thereof, change the time at which the Securities of any Series may be redeemed, or impair or affect the right of any Holder to receive payment of principal of, and interest on, any Security or to institute suit for payment thereof or, if the Securities provide therefor, affect any right of repayment at the option of the Holder; or

(b) change the provisions of the Indenture that relate to modifying or amending the provisions of the Indenture described above.

This Indenture may not be amended to alter the subordination of any of the Outstanding Securities of any Series without the written consent of each holder of Senior Indebtedness then outstanding that would be adversely affected thereby, such written consent to be accompanied by an Opinion of Counsel or Officers' Certificate to such effect.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors certified by the secretary or an assistant secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee for such Series of Securities of evidence of the consent of the Holders as aforesaid and other documents, if any, required by Section 7.01, the Trustee for such Series of Securities shall join with the Company in the execution of such supplemental indenture. If such supplemental indenture affects such Trustee's own rights, duties or immunities under this Indenture or otherwise, such Trustee in its discretion may, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 8.02 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 8.02, the Company shall give notice in the manner and to the extent provided in Section 13.04 to the Holders of Securities of each Series affected thereby at their addresses as they shall appear on the Security register, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to mail such notice, or any defect therein, shall not in any way impair or affect the validity of any such supplemental indenture.

SECTION 8.03. *Effect of Supplemental Indenture.* Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Securities of each 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 8.04. *Documents to Be Given to Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall be provided with an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture as conclusive evidence that any supplemental indenture executed pursuant to this Article 8 complies with the applicable provisions of this Indenture.

SECTION 8.05. *Notation on Securities in Respect of Supplemental Indentures.* Securities of any Series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 8 may bear, upon the direction of the Company, a notation in form satisfactory to the Trustee for the Securities of such Series as to any matter provided for by such supplemental indenture. If the Company shall so determine, new Securities of any 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 Outstanding Securities of such Series.

ARTICLE 9
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

SECTION 9.01. *Company May Consolidate, Etc. on Certain Terms.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company may consolidate with or amalgamate or merge with or into, or sell, convey or lease all or substantially all of its assets to, any other company; provided that in any such case:

(a) either the Company shall be the continuing company, or the successor company shall be organized and existing under the laws of the United States, any state thereof, a member state of the European Union or any political subdivision thereof and shall expressly assume the due and punctual payment of the principal of and interest on all the Securities, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company; and

(b) such continuing or successor company, as the case may be, shall not be in material default immediately after such amalgamation, merger, consolidation, sale, conveyance or lease in the performance or observance of any such covenant or condition.

SECTION 9.02. *Successor Corporation Substituted.* In case of any such amalgamation, merger, consolidation, sale, lease or conveyance, and following such an assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein. Such successor corporation may cause to be signed, and may issue either in its own name or in the name of the Company prior to such succession, any or all of the Securities issuable hereunder that shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this Indenture, the Trustee shall authenticate and shall make available for delivery any Securities that shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in

accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

In the event of any such sale or conveyance the Company (or any successor corporation which shall theretofore have become such in the manner described in this Article 9) shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

The provisions of this Section 9.02 shall apply except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 9.03. *Opinion of Counsel to Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall receive an Opinion of Counsel, prepared in accordance with Section 13.06, as conclusive evidence that any such consolidation, amalgamation, merger, sale, lease or conveyance, and any such assumption complies with the applicable provisions of this Indenture.

ARTICLE 10
SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE;
UNCLAIMED FUNDS

SECTION 10.01. *Satisfaction and Discharge of Indenture; Defeasance.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series:

(a) When (i) all Outstanding Securities of a Series (other than Securities of such Series replaced or paid pursuant to Section 2.08) have been canceled or delivered to the Trustee for cancellation or (ii) all Outstanding Securities of such Series have become due and payable, whether at maturity or as a result of the mailing of a notice of redemption in connection with a redemption of a Series of Securities, or will become due and payable within one year, and the Company irrevocably deposits with the Trustee funds in an amount sufficient to purchase U.S. Government Obligations, the principal of and interest on which will be sufficient, or a combination thereof sufficient, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (which opinion shall only be required to be delivered if U.S. Government Obligations have been so deposited), to pay the principal of and interest on the outstanding Securities when due at maturity or upon redemption of, including interest thereon to maturity or such redemption date (other than Securities of such Series replaced or paid pursuant to Section 2.08), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 10.01(c), cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 10.01(c) and 10.02, the Company at any time may terminate (i) all of its obligations under the Securities of such Series and this Indenture (“**legal defeasance option**”) or (ii) its obligations under Article 3 of this Indenture and Section 4.03 (“**covenant defeasance option**”). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option for such Series.

If the Company exercises its legal defeasance option with respect to Securities of a Series, payment of the Securities of such Series may not be accelerated because of an Event of Default.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company’s obligations in Sections 2.08, 2.10 and 6.07, and in this Article 10 shall survive until the Securities of such Series have been paid in full. Thereafter, the Company’s obligations in Sections 6.07 and 10.05 and the Trustee’s obligations under Section 10.04 shall survive such satisfaction and discharge.

SECTION 10.02 Conditions to Defeasance. Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company may exercise its legal defeasance option or its covenant defeasance option only if:

(a) the Company irrevocably deposits in trust with the Trustee money in an amount sufficient or U.S. Government Obligations, the principal of and interest on which will be sufficient, or a combination thereof sufficient, to pay the principal of, and premium (if any) and interest on the Securities of such Series when due at maturity or redemption, as the case may be, including interest thereon to maturity or such redemption date;

(b) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) 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 such Series will not recognize income, gain or loss for Federal Income Tax purposes as a result of such deposit and 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 deposit and defeasance had not occurred; and

(c) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Series will not recognize income, gain or loss for Federal Income Tax purposes as a result of such deposit and 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 deposit and defeasance had not occurred.

SECTION 10.03 *Application of Trust Funds*. The Trustee shall hold in trust funds or U.S. Government Obligations deposited with it pursuant to this Article 10. It shall apply the deposited funds and the proceeds from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities of such Series.

SECTION 10.04 *Repayment to Company*. The Trustee and the Paying Agent shall promptly turn over to the Company upon request any funds or U.S. Government Obligations held by it as provided in this Article 10 which, in the written opinion of nationally recognized firm of independent public accountants delivered to the Trustee (which opinion shall only be required to be delivered if U.S. Government Obligations have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 10.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any funds held by them for the payment of principal or interest or that remains unclaimed for two years, and, thereafter, Holders entitled to the funds must look to the Company for payment as general creditors, and the Trustee and the Paying Agent shall have no further liability with respect to such funds.

SECTION 10.05 *Indemnity for Government Obligations*. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 10.06 *Reinstatement*. If the Trustee or Paying Agent is unable to apply any funds or U.S. Government Obligations in accordance with this Article 10 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities of such Series shall be revived and reinstated as though no deposit had occurred pursuant to this Article 10 until such time as the Trustee or Paying Agent is permitted to apply all such funds or U.S. Government Obligations in accordance with this Article 10; provided, however, that, if the Company has made any payment of principal of or interest on, any Securities of such Series because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds or U.S. Government Obligations held by the Trustee or Paying Agent.

This Section 10.06 shall not apply to any Series unless specified as contemplated by Section 2.03 for the Securities of such Series.

ARTICLE 11
REDEMPTION OF SECURITIES AND SINKING FUNDS

SECTION 11.01. *Applicability of Article.* The provisions of this Article 11 shall be applicable to the Securities of any Series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a Series except as otherwise specified as contemplated by Section 2.03 for Securities of such Series.

SECTION 11.02. *Notice of Redemption; Partial Redemptions.* Notice of redemption to the Holders of Securities of any Series required to be redeemed or to be redeemed as a whole or in part at the option of the Company shall be given by giving notice of such redemption as provided in Section 13.04, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such Series. Failure to give notice by mail, or any defect in the notice to the Holder of any Security of a Series designated for redemption as a whole or in part, shall not affect the validity of the proceedings for the redemption of any other Security of such Series.

The notice of redemption to each such Holder shall specify the date fixed for redemption, the CUSIP number or numbers for such Securities, the redemption price, the Place of Payment or Places of Payment, that payment will be made upon presentation and surrender of such Securities, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice, that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue and, if applicable, that a Holder of Securities who desires to convert Securities for redemption must satisfy the requirements for conversion contained in such Securities, the then existing conversion price or rate and the date and time when the option to convert shall expire. If less than all of the Securities of any Series are to be redeemed, the notice of redemption shall specify the numbers of the Securities of such Series to be redeemed. In case any Security of a Series is to be redeemed in part, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such Series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any Series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. If such notice is to be given by the Trustee, the Company shall provide notice of such redemption to the Trustee at least 45 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee). If such notice is given by the Company, the Company shall provide a copy of such notice given to the Holders of such redemption to the Trustee at least three Business Days prior to the date such notice is given to such Holders, but in any event at least 15 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee).

Unless otherwise specified pursuant to Section 2.03, not later than 10:00 a.m. Eastern time (or such later time as may be satisfactory to the Trustee or Paying Agent) on the redemption date specified in the notice of redemption given as provided in this

Section 11.02, the Company will have on deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 3.03) funds available on such date (or other forms of property, if permitted by the terms of the Securities of such Series) sufficient to redeem on the redemption date all the Securities of such Series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If less than all the Outstanding Securities of a Series are to be redeemed, the Company will deliver to the Trustee at least 45 days prior to the date fixed for redemption an Officers' Certificate stating the aggregate principal amount of Securities to be redeemed (unless a shorter notice shall be satisfactory to the Trustee).

If less than all the Securities of a Series are to be redeemed, the Trustee shall select Securities of such Series to be redeemed on a pro rata basis, by lot or by such other method as the Trustee shall deem to be fair and appropriate, and the Trustee shall promptly notify the Company in writing of the Securities of such Series selected for redemption and, in the case of any Securities of such Series selected for partial redemption, the principal amount thereof to be redeemed. However, if less than all the Securities of any Series with differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular securities to be redeemed and shall notify the Trustee in writing thereof at least 45 days prior to the relevant redemption date (unless a shorter notice shall be satisfactory to the Trustee). Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such Series or any multiple thereof. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any Series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

This Section 11.02 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 11.03. *Payment of Securities Called for Redemption.* If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue. Except as provided in Sections 6.01 and 10.04, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a Place of Payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption. If for any Securities the date fixed for redemption is a regular interest payment date, payment of interest becoming due on such date

shall be payable to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of Section 2.07.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest borne by the Security.

Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

This Section 11.03 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 11.04. *Exclusion of Certain Securities from Eligibility for Selection for Redemption.* Except with respect to Securities in global form, Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 30 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

SECTION 11.05. *Repayment at the Option of the Holders.* Securities of any Series that are repayable at the option of the Holders before their stated maturity shall be repaid in accordance with the terms of the Securities of such Series.

The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their stated maturity, for purposes of Section 10.01, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a direction that such Securities be cancelled.

ARTICLE 12 CONVERSION OF SECURITIES

SECTION 12.01. *Applicability of Article.* Securities of any Series that are convertible into Common Shares at the option of the Holder of such Securities shall be convertible in accordance with their terms and, unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, in accordance with this Article 12. Each reference in this Article 12 to “a Security” or “the Securities” refers to the Securities of the particular Series that is convertible into Common

Shares. If more than one Series of Securities with conversion privileges are Outstanding at any time, the provisions of this Article 12 shall be applied separately to each such Series.

SECTION 12.02. *Right of Holders to Convert Securities into Common Shares.* Subject to the provisions of this Article 12, at the option of the Holder thereof, any Security of any Series that is convertible into Common Shares, or any portion of the principal amount thereof which is \$1,000 or any integral multiple of \$1,000, may be converted into duly authorized, validly issued, fully paid and nonassessable Common Shares at any time during the period specified in the Securities of such Series, at the conversion price or conversion rate for each \$1,000 principal amount of Securities then in effect upon (a) in the case of any Security held in global form, surrender of the Security or Securities to the Company, at the account specified by the Trustee, and compliance with the procedures of the Depository in effect at that time and (b) in the case of certificated Securities, surrender of the Security or Securities to the Company, duly endorsed to the Company or in blank, at any time during usual business hours at the office or agency to be maintained by it in accordance with the provisions of Section 3.02, and in either case accompanied by a written notice of election to convert as provided in Section 12.03.

If the Holder requests that the Common Shares be registered in a name other than that of the Holder, such notice also shall be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and/or the Trustee, as applicable, duly executed by the Holder thereof or his attorney duly authorized in writing. All Securities surrendered for conversion shall, if surrendered to the Company or any conversion agent, be delivered to the Trustee for cancellation and cancelled by it, or shall, if surrendered to the Trustee, be cancelled by it, as provided in Section 2.11.

The initial conversion price or conversion rate in respect of a Series of Securities shall be as specified in the Securities of such Series. The conversion price or conversion rate will be subject to adjustment on the terms set forth in Section 12.05 or such other or different terms, if any, as may be specified by Section 2.03 for Securities of such Series. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of any portion of such Security.

SECTION 12.03. *Issuance of Common Shares on Conversions.* As promptly as practicable after the surrender of any Security or Securities for conversion into Common Shares, the Company shall issue to or upon the written order of the Holder of the Security or Securities so surrendered the number of duly authorized, validly issued, fully paid and nonassessable Common Shares into which such Security or Securities may be converted in accordance with the terms thereof and the provisions of this Article 12. Prior to issuance of such Common Shares, the Company shall require written notice at its said office or agency from the Holder of the Security or Securities so surrendered stating that the Holder irrevocably elects to convert such Security or Securities, or, if less than the entire principal amount thereof is to be converted, stating the portion thereof to be converted. Such notice shall also state the name or names (with address and social security or other taxpayer identification number) in which said common shares are to be issued. Such conversion shall be made at the time that such Security or Securities shall be

surrendered for conversion and such notice shall be received by the Company or the Trustee and such conversion shall be at the conversion price in effect at such time. The rights of the Holder of such Security or Securities as a Holder shall cease at such time, and the Person or Persons entitled to receive the Common Shares upon conversion of such Security or Securities shall be treated for all purposes as having become either record holder or holders of such Common Shares at such time. In the case of any Security of any Series that is converted in part only, upon such conversion the Company shall execute and, upon the Company's request and at the Company's expense, the Trustee or an authenticating agent shall authenticate and deliver to the Holder thereof, as requested by such Holder, a new Security or Securities of such Series of authorized denominations in aggregate principal amount equal to the unconverted portion of such Security.

If the last day on which such Security may be converted is not a Business Day in a place where the conversion agent for that Security is located, such Security may be surrendered to that conversion agent on the next succeeding day that is a Business Day.

The Company shall not be required to issue certificates for Common Shares upon conversion while its shareholder list is closed for a meeting of shareholders or for the payment of dividends or for any other purpose, but Common Shares shall be issued as soon as the shareholder list shall again be opened.

SECTION 12.04. *No Payment or Adjustment for Interest or Dividends.* Unless otherwise specified as contemplated by Section 2.03 for Securities of such Series, Securities surrendered for conversion into Common Shares during the period from the close of business on any regular record date or special record date next preceding any interest payment date to the opening of business on such interest payment date (except Securities called for redemption on a redemption date within such period) when surrendered for conversion must be accompanied by payment (by wire transfer or certified or official bank check to the order of the Company payable in clearing house funds at the location where the Securities are surrendered) of an amount equal to the interest thereon which the Holder is entitled to receive on such interest payment date. Payment of interest shall be made, on such interest payment date or such other payment date (as set forth in Section 2.07), as the case may be, to the Holder of the Securities as of such regular record date or special record date, as applicable. Except where Securities surrendered for conversion must be accompanied by payment as described above, no interest on converted Securities will be payable by the Company on any interest payment date subsequent to the date of conversion. No other payment or adjustment for interest or dividends is to be made upon conversion. Notwithstanding the foregoing, upon conversion of any Original Issue Discount Security, the fixed number of Common Shares into which such Security is convertible delivered by the Company to the Holder thereof shall be applied, first, to the portion attributable to the accrued original issue discount relating to the period from the date of issuance to the date of conversion of such Security, and, second, to the portion attributable to the balance of the principal amount of such Security.

SECTION 12.05. *Adjustment of Conversion Price.* Unless otherwise specified as contemplated by Section 2.03 for

Securities of such Series, the conversion price for Securities convertible into Common Shares shall be adjusted from time to time as follows:

(a) If the Company shall (x) pay a dividend or make a distribution on Common Shares in Common Shares, (y) subdivide the issued and outstanding Common Shares into a greater number of shares or (z) consolidate the issued and outstanding Common Shares into a smaller number of shares, the conversion price for the Securities of such Series shall be adjusted so that the Holder of any such Security thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such Holder would have owned or have been entitled to receive after the happening of any of the events described above had such Security been converted immediately prior to the record date in the case of a dividend or the effective date in the case of subdivision or consolidation. An adjustment made pursuant to this Section 12.05(a) shall become effective immediately after the record date in the case of a dividend, except as provided in Section 12.05(h), and shall become effective immediately after the effective date in the case of a subdivision or consolidation.

(b) If the Company shall issue rights or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the current market price per share of Common Shares (as defined for purposes of this Section 12.05(b) in Section 12.05(e)), at the record date for the determination of shareholders entitled to receive such rights or warrants, the conversion price in effect immediately prior thereto shall be adjusted so that the same shall equal the price determined by multiplying the conversion price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of Common Shares outstanding on such record date plus the number of Common Shares which the aggregate offering price of the total number of Common Shares so offered would purchase at such current market price, and the denominator of which shall be the number of Common Shares outstanding on such record date plus the number of additional Common Shares receivable upon exercise of such rights or warrants. Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately, except as provided in Section 12.05(h), after such record date. In determining whether any rights or warrants entitle the Holders of the Securities of such Series to subscribe for or purchase Common Shares at less than such current market price, and in determining the aggregate offering price of such Common Shares, there shall be taken into account any consideration received by the Company for such rights or warrants plus the exercise price thereof, the value of such consideration or exercise price, as the case may be, if other than cash, to be determined by the Board of Directors.

(c) If the Company shall distribute to all holders of Common Shares any shares of Capital Stock of the Company (other than Common Shares) or evidences of its indebtedness or assets (excluding cash dividends or distributions paid from retained earnings of the Company) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights or warrants referred to in Section 12.05(b)) (any of the foregoing being herein in this Section 12.05(c) called the “**Special Securities**”), the conversion price shall be adjusted as provided in the next sentence unless the Company

elects to reserve such Special Securities for distribution to the Holders of Securities of such Series upon the conversion so that any such Holder converting such Securities will receive upon such conversion, in addition to the Common Shares to which such Holder is entitled, the amount and kind of Special Securities which such Holder would have received if such Holder had, immediately prior to the record date for the distribution of the Special Securities, converted Securities into Common Shares. The conversion price, as adjusted, shall equal the price determined by multiplying the conversion price in effect immediately prior to such record date by a fraction the numerator of which shall be the current market price per share (as defined for purposes of this Section 12.05(c) in Section 12.05(e)) of Common Shares on the record date mentioned above less the then fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) of the portion of the Special Securities so distributed applicable to one Common Share, and the denominator of which shall be the current market price per Common Share. In the event the then fair market value (as so determined) of the portion of the Special Securities so distributed applicable to one Common Share is equal to or greater than the current market price per Common Share on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of Securities of such Series shall have the right to receive the amount and kind of Special Securities such holder would have received had he converted such Securities immediately prior to the record date for the distribution of the Special Securities. Such adjustment shall become effective immediately, except as provided in Section 12.05(h), after the record date for the determination of shareholders entitled to receive such distribution.

(d) If, pursuant to Section 12.05(b) or 12.05(c), the conversion price shall have been adjusted because the Company has declared a dividend, or made a distribution, on the issued and outstanding Common Shares in the form of any right or warrant to purchase securities of the Company, or the Company has issued any such right or warrant, then, upon the expiration of any such unexercised right or unexercised warrant, the conversion price shall forthwith be adjusted to equal the conversion price that would have applied had such right or warrant never been declared, distributed or issued.

(e) For the purpose of any computation under Section 12.05(b), the current market price per Common Share on any date shall be deemed to be the average of the reported last sales prices for the 30 consecutive Trading Days (as defined below) commencing 45 Trading Days before the date in question. For the purpose of any computation under Section 12.05(c), the current market price per Common Share on any date shall be deemed to be the average of the reported last sales prices for the ten consecutive Trading Days before the date in question. The reported last sales price for each day (whether for purposes of Section 12.05(b), 12.05(c) or 12.06) shall be the reported last sales price, regular way, or, in case no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if the Common Shares are not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the Nasdaq Global Market or the Nasdaq Global Select Market (collectively, the "**Nasdaq**

Market") or, if the Common Shares are not quoted on the Nasdaq Market, the average of the closing bid and asked prices on such day in the over-the-counter market as furnished by any New York Stock Exchange member firm regularly making a market in the Common Shares selected for such purpose by the Board of Directors or, if no such quotations are available, the fair market value of the Common Shares as determined by a New York Stock Exchange member firm regularly making a market in the Common Shares selected for such purpose by the Board of Directors. As used herein, the term "**Trading Day**" with respect to the Common Shares means (x) if the Common Shares are listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business, (y) if the Common Shares are quoted on the Nasdaq Market, a day on which trades may be made on the Nasdaq Market or (z) otherwise, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(f) No adjustment in the conversion price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price. Any adjustments that by reason of this Section 12.05(f) are not required to be made, however, shall be carried forward and taken into account in any subsequent adjustment. Any adjustment required to be made in accordance with the provisions of this Article 12 shall be made not later than such time as may be required in order to preserve the tax free nature of a distribution to the holders of Common Shares. All calculations under this Article 12 shall be made by the Company and shall be to the nearest cent or to the nearest one-one hundredth of a share, as the case may be, with one-half cent and one-two hundredth of a share, respectively, being rounded upward. The Company shall be entitled to make such reductions in the conversion price, in addition to those required by this Section 12.05, as it in its discretion shall determine to be advisable in order that any share dividend or bonus issue, subdivision of shares, distribution of rights or warrants to purchase shares or securities or distribution of other assets (other than cash dividends) made by the Company to its shareholders shall not be taxable.

(g) Whenever the conversion price is adjusted, the Company shall file with the Trustee, at the Corporate Trust Office of the Trustee, and with the office or agency maintained by the Company for the conversion of Securities of such Series pursuant to Section 3.02, an Officers' Certificate, setting forth the conversion price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment. Neither the Trustee nor any conversion agent shall be under any duty or responsibility with respect to any such certificate or any facts or computations set forth therein, except to exhibit said certificate from time to time to any Holder of a Security of such Series desiring to inspect the same. The Company shall promptly cause a notice setting forth the adjusted conversion price to be mailed to the Holders of Securities of such Series, as their names and addresses appear upon the Security register.

(h) In any case in which this Section 12.05 provides that an adjustment shall become effective immediately after a record date for an event, the Company may defer

until the occurrence of such event (y) issuing to the Holder of any Security of such Series converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (z) paying to such holder any amount in cash in lieu of any fractional Common Shares pursuant to Section 12.06.

SECTION 12.06. *No Fractional Shares to Be Issued.* No fractional Common Shares shall be issued upon any conversion of Securities. If more than one Security of any Series shall be surrendered for conversion at one time by the same Holder, the number of full Common Shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities of such Series (or specified portions thereof to the extent permitted hereby) so surrendered. Instead of a fraction of a Common Share which would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment (computed to the nearest cent, with one-half cent being rounded upward) in respect of such fraction of a share in an amount equal to the same fractional interest of the reported last sales price of the Common Shares on the Trading Day next preceding the day of conversion.

SECTION 12.07. *Notice to Holders of the Securities of a Series Prior to Taking Certain Types of Action.* With respect to the Securities of any Series, in case:

- (a) the Company shall authorize the issuance to all holders of Common Shares of rights or warrants to subscribe for or purchase shares or any other right;
- (b) the Company shall authorize the distribution to all holders of Common Shares of evidences of indebtedness or assets (except for cash dividends or distributions paid from retained earnings of the Company);
- (c) of any subdivision or consolidation of Common Shares or of any amalgamation, consolidation or merger to which the Company is a party and for which approval by the shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of Securities of such Series pursuant to Section 3.02, and shall cause to be mailed to the Holders of Securities of such Series at their last addresses as they shall appear on the Security register, at least ten days prior to the applicable record date hereinafter specified, a notice stating (i) the date as of which the holders of Common Shares to be entitled to receive any such rights, warrants or distribution are to be determined, or (ii) the date on which any such share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation,

winding up or other action is expected to become effective, and the date as of which it is expected that holders of record of Common Shares shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation, winding up or other action. The failure to give the notice required by this Section 12.07 or any defect therein shall not affect the legality or validity of any distribution, right, warrant, share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation, winding up or other action, or the vote upon any of the foregoing.

SECTION 12.08. *Covenant to Reserve Shares for Issuance on Conversion of Securities.* The Company at all times will reserve and keep available out of each class of its authorized Common Shares, free from preemptive rights, solely for the purpose of issue upon conversion of Securities of any Series as herein provided, such number of Common Shares as shall then be issuable upon the conversion of all Outstanding Securities of such Series. All Common Shares which shall be so issuable, when issued or delivered, shall be duly and validly issued Common Shares into which Securities of such Series are convertible, and shall be fully paid and nonassessable, free of all liens and charges and not subject to preemptive rights.

SECTION 12.09. *Compliance with Governmental Requirements.* If any Common Shares required to be reserved for purposes of conversion of Securities hereunder require registration or listing with or approval of any governmental authority under any Federal or State law, pursuant to the Securities Act or the Securities Exchange Act or any national or regional securities exchange on which the Common Shares are listed at the time of delivery of any Common Shares, the Company will use its best efforts to cause such shares to be duly registered, listed or approved, as the case may be, before such shares may be issued upon conversion.

SECTION 12.10. *Payment of Taxes upon Certificates for Shares Issued upon Conversion.* The issuance of certificates for Common Shares upon the conversion of Securities shall be made without charge to the converting Holders for any tax (including documentary and stamp taxes) in respect of the issuance and delivery of such certificates, and such certificates shall be issued in the respective names of, or in such names as may be directed by, the Holders of the Securities converted. The Company, however, shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the Holder of the Security converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 12.11. *Trustee's Duties with Respect to Conversion Provisions.* The Trustee and any conversion agent shall have no duty to any Holder to determine whether any facts exist that may require any adjustment of the conversion rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, in making the same. Neither the Trustee nor any conversion agent shall be accountable with respect to the

registration under securities laws, listing, validity or value (or the kind or amount) of any Common Shares, or of any other securities or property, that at any time may be issued or delivered upon the conversion of any Security, and neither the Trustee nor any conversion agent makes any representation with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to make any payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion. The Trustee and any conversion agent, subject to the provisions of Section 313 of the Trust Indenture Act, shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Article 12.

SECTION 12.12. *Trustee Under No Duty to Monitor Stock Price or Calculations.* In no event shall the Trustee or conversion agent be responsible for monitoring the price of the Company's common stock, or performing any calculations under this Article 12, such activities being the responsibility of the Company.

SECTION 12.13. *Conversion Arrangement on Call for Redemption.* In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities called for redemption by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee or the Paying Agent in trust for the Holders of Securities, at or before 10:00 a.m. Eastern time on the redemption date, an amount not less than the redemption price, together with interest, if any, accrued to the redemption date of such Securities, in immediately available funds. Notwithstanding anything to the contrary contained in this Article 12, the obligation of the Company to pay the redemption price of such Securities, including all accrued interest, if any, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Securities not duly surrendered for conversion by the Holders thereof, at the option of the Company, may be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the last day on which such Securities called for redemption may be converted in accordance with this Indenture and the terms of such Securities, subject to payment to the Trustee or Paying Agent of the above-described amount. The Trustee or the Paying Agent shall hold and pay to the Holders whose Securities are selected for redemption any such amount paid to it in the same manner as it would pay funds deposited with it by the Company for the redemption of Securities. Without the Trustee's and the Paying Agent's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee and the Paying Agent as set forth in this Indenture. The Company agrees to indemnify the Trustee and the Paying Agent from, and hold them harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers, including the reasonable costs and expenses incurred by the Trustee and the Paying Agent in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of their powers, duties, responsibilities or obligations under this Indenture.

ARTICLE 13
MISCELLANEOUS PROVISIONS

SECTION 13.01. *Incorporators, Shareholders, Officers and Directors of Company Exempt from Individual Liability.* No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Security shall be had against any incorporator as such or against any past, present or future director, officer, employee, incorporator, agent or shareholder of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders thereof and as part of the consideration for the issue of the Securities. This Section 13.01 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 13.02. *Provisions of Indenture for the Sole Benefit of Parties and Holders.* Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any Person, firm or corporation, other than the parties hereto, any Paying Agent and their successors hereunder and the Holders of the Securities any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders.

SECTION 13.03. *Successors and Assigns of Company Bound by Indenture.* 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 13.04. *Notices and Demands on Company, Trustee and Holders.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders to or on the Company may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Trustee) to Eastman Kodak Company, 343 State Street, Rochester, NY 14650, Attention: General Counsel. Any notice, direction, request or demand by the Company or any Holder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the Corporate Trust Office.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed by first-class mail, postage prepaid to such Holders as their names and addresses appear in the Security register within the time prescribed. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before

or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Company and Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be reasonably acceptable to the Trustee shall be deemed to be a sufficient giving of such notice.

SECTION 13.05. *Electronic Transmission to the Trustee.* In addition to the foregoing, the Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance in good faith with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction received by the Trustee following action taken pursuant to prior instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting in good faith on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 13.06. *Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that the person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

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

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

SECTION 13.07. *Payments Due on Saturdays, Sundays and Holidays.* Unless otherwise specified in a Security, if the date of maturity of interest on or principal of the Securities of any Series or the date fixed for redemption, repurchase or repayment of any such Security shall not be a Business Day, payment of interest or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

SECTION 13.08. *Conflict of any Provision of Indenture with Trust Indenture Act.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required by the Trust Indenture Act, such

required provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 13.09. *New York Law to Govern.* This Indenture and each Security will be governed by and construed in accordance with the laws of the State of New York.

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

SECTION 13.11. *Effect of Headings; Gender.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. The use of the masculine, feminine or neuter gender herein shall not limit in any way the applicability of any term or provision hereof.

SECTION 13.12. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 13.13. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.14. *Certain Tax Information.* In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time to which a foreign financial institution, or issuer, trustee, paying agent, holder or other institution that is subject ("Applicable Law") in relation to the Indenture, the Company agrees (i) to provide to the Trustee, to the extent reasonably available to the Company, sufficient information about holders or other applicable parties and/or transactions (including any modification to the terms of such transactions) so the Trustee can determine whether it has tax related obligations under Applicable Law, (ii) that the Trustee shall be entitled to make any withholding or deduction from payments under the Indenture to the extent necessary to comply with Applicable Law for which the Trustee shall not have any liability, and (iii) to hold harmless

the Trustee for any losses it may suffer due to the actions it takes to comply with such Applicable Law, in case of each of clauses (ii) and (iii), other than any liability or losses as may be attributable to the Trustee's willful misconduct or negligence. The terms of this section shall survive the termination of this Indenture.

ARTICLE 14 SUBORDINATION OF SECURITIES

SECTION 14.01. *Securities Subordinated to Senior Indebtedness.* The Company covenants and agrees, and each Holder of Securities, by his acceptance thereof, likewise covenants and agrees that the indebtedness represented by the Securities and the payment of any and all amounts payable in respect of each and all of the Securities is expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of Senior Indebtedness, whether outstanding on the date of this Indenture or thereafter incurred, assumed or guaranteed.

In the event (x) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company whether in a bankruptcy, insolvency, reorganization or receivership proceeding or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with an amalgamation, merger or consolidation or a conveyance or transfer of all or substantially all of the properties of the Company which complies with the requirements of Article 9, (y) that a default shall have occurred and be continuing with respect to the payment of any amount payable in respect of any Senior Indebtedness or (z) that the principal of the Securities of any Series shall have been declared due and payable pursuant to Section 5.01 and such declaration shall not have been rescinded and annulled as provided in Section 5.01, then:

(a) in a circumstance described in the foregoing clause (x) or (y) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (z) the holders of all Senior Indebtedness the principal of which shall have been so declared due and payable, shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment, before the Holders of any of the Securities are entitled to receive any payment in respect of the indebtedness evidenced by the Securities;

(b) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article 14 with respect to the Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of the Senior Indebtedness are not altered by such reorganization or readjustment), to which the Holders of any of the Securities would be entitled except for the provisions of this Article 14 shall be paid or delivered by the person making such payment or distribution, whether a liquidator, trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or

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

(c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article 14 with respect to the Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of Senior Indebtedness are not altered by such reorganization or readjustment), shall be received by the Holders of any of the Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

SECTION 14.02. *Subrogation.* Subject to the payment in full of all Senior Indebtedness to which the indebtedness evidenced by the Securities is in the circumstances subordinated as provided in Section 14.01, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Securities shall be paid in full. As between the Company, its creditors other than holders of such Senior Indebtedness and the Holders of the Securities, no such payment or distribution made to the holders of such Senior Indebtedness by virtue of this Article 14 which otherwise would have been made to the Holders of the Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being understood that the provisions of this Article 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 Senior Indebtedness, on the other hand.

SECTION 14.03. *Obligation of the Company Unconditional.* 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 Indebtedness, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and interest on and any additional amounts owing in respect of 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 Senior Indebtedness nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 14 of the holders of Senior Indebtedness 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 and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the liquidator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article 14.

SECTION 14.04. *Payments on Securities Permitted.* Nothing contained in this Article 14 or elsewhere in this Indenture, or in any of the Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payment of the principal of or interest on or any additional amounts owing in respect of the Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article 14. No provision of this Article 14 shall prevent the occurrence of any default or Event of Default hereunder.

SECTION 14.05. *Effectuation of Subordination by Trustee.* Each Holder of Securities, by his acceptance thereof, authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 14 and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.06. *Knowledge of Trustee.* The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Failure to give such notice shall not affect the subordination of the Securities to Senior Indebtedness. Notwithstanding the provisions of this Article 14 or any other provisions of this Indenture, the Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee shall have received written notice thereof from the Company, any Holder of Securities, any paying or conversion agent of the Company or the holder or representative of any class of Senior Indebtedness or from any trustee or agent therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.01, shall be entitled in all respects to assume that no such facts exist. If a Responsible Officer of the Trustee shall not have received the notice provided for in this Section 14.06 at least three Business Days prior to the date upon which, by the terms hereof, any

amounts may become payable for any purpose (including the payment of the principal of or interest on, or additional amounts owing in respect of, any Security) then, anything herein contained to the contrary notwithstanding, the Trustee shall have all power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it during or after such three Business Day period.

SECTION 14.07. *Notices From Holders of Senior Indebtedness.* 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 Indebtedness (or a trustee or agent on behalf of such holder) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee or agent 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 Indebtedness 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 Indebtedness held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such person under this Article 14, and if such evidence is not furnished, the Trustee may defer any payment which it may be required to make for the benefit of such person pursuant to the terms of this Indenture pending judicial determination as to the rights of such person to receive such payment.

SECTION 14.08. *Trustee May Hold Senior Indebtedness.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 14 with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 313 of the Trust Indenture Act or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article 14 shall subordinate any claims of, or payments to, the Trustee pursuant to Section 6.07 to Senior Indebtedness.

SECTION 14.09. *Rights of Holders of Senior Indebtedness Not Impaired.* No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

SECTION 14.10. *Default in Senior Indebtedness*

(a) Subject to Section 14.10(b), upon the happening of any event of default with respect to any Senior Indebtedness, as such event of default is defined in the instrument under which the Senior Indebtedness is outstanding, the holders of the Senior

Indebtedness, directly or indirectly, may demand by giving written notice to the Company and the Trustee that, until such event of default shall have been cured or waived or shall have ceased to exist, the Company be prohibited from:

- (i) exercising any right of redemption with respect to the Securities of any Series pursuant to Article 11;
- (ii) making any payments with respect to the redemption of the Securities of any Series that were called for redemption pursuant to Article 11 prior to the happening of an event of default with respect to any Senior Indebtedness;
- (iii) making any payment with respect to the principal of and interest on the Securities of any Series or as a sinking fund payment pursuant to Article 11; and
- (iv) making any payment with respect to the repayment of the Securities of any Series at the option of the Holders pursuant to Section 11.05.

(b) If the holders of the Senior Indebtedness, directly or indirectly, fail to demand the rights provided in Section 14.10(a) within 90 days of the happening of an event of default with respect to such Senior Indebtedness they shall be deemed to have waived such rights with respect to such event of default; provided, however, that such waiver shall not affect the ability of the holders of the Senior Indebtedness to demand such rights upon the happening of any other event of default.

SECTION 14.11. *Trustee Not Fiduciary for Holders of Senior Indebtedness.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 14 or otherwise. With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Indebtedness shall be read into this Indenture against the Trustee.

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

EASTMAN KODAK COMPANY

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

EASTMAN KODAK COMPANY

AND

[_____]

as Trustee

Senior Debt Securities

INDENTURE

Dated as of _____, 20__

CROSS REFERENCE SHEET *

Provisions of Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939, as amended, and the Indenture dated as of _____, 20__ between Eastman Kodak Company and [_____] as Trustee.

Section of Trust Indenture Act	Section of Indenture
310(a)(1)	6.10
310(a)(2)	6.10
310(a)(3)	N/A
310(a)(4)	N/A
310(a)(5)	6.10
310(b)	6.10
310(c)	N/A
311(a)	6.11
311(b)	6.11
311(c)	N/A
312(a)	4.01
312(b)	4.02(b)
312(c)	4.02(c)
313(a)	6.06
313(b)	6.06
313(c)	6.06
313(d)	6.06
314(a)	3.04; 4.03
314(b)	N/A
314(c)(1)	2.04; 13.06
314(c)(2)	2.04; 13.06
314(c)(3)	N/A
314(d)	N/A
314(e)	13.06
314(f)	N/A
315(a)	6.01(b)
315(b)	6.05
315(c)	6.01(a)
315(d)	6.01(c)
315(e)	5.10
316(a)(1)(A)	5.08
316(a)(1)(B)	5.09
316(a)(2)	N/A
316(b)	5.06
316(c)	2.07
317(a)	5.02
317(b)	3.02; 3.03
318(a)	13.08

* This cross reference sheet shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the Trust Indenture Act of 1939, as amended, which provides that the provisions of Sections 310 through 317 of such Act are a part of and govern every qualified indenture, whether or not physically contained therein.

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 DEFINITIONS	1
SECTION 1.01. <i>Certain Terms Defined</i>	1
ARTICLE 2 SECURITIES	5
SECTION 2.01. <i>Forms Generally</i>	5
SECTION 2.02. <i>Form of Trustee's Certificate of Authentication</i>	6
SECTION 2.03. <i>Amount Unlimited; Issuable in Series</i>	6
SECTION 2.04. <i>Authentication and Delivery of Securities</i>	9
SECTION 2.05. <i>Execution of Securities</i>	10
SECTION 2.06. <i>Certificate of Authentication</i>	10
SECTION 2.07. <i>Denomination and Date of Securities; Payments of Interest</i>	10
SECTION 2.08. <i>Registration, Registration of Transfer and Exchange</i>	12
SECTION 2.09. <i>Trustee's Duties to Monitor Compliance</i>	12
SECTION 2.10. <i>Mutilated, Defaced, Destroyed, Lost and Stolen Securities</i>	13
SECTION 2.11. <i>Cancellation of Securities</i>	13
SECTION 2.12. <i>Temporary Securities</i>	14
SECTION 2.13. <i>Securities in Global Form</i>	14
SECTION 2.14. <i>CUSIP Numbers</i>	15
ARTICLE 3 COVENANTS OF THE COMPANY	15
SECTION 3.01. <i>Payment of Principal and Interest</i>	15
SECTION 3.02. <i>Offices for Payment, Etc.</i>	15
SECTION 3.03. <i>Paying Agents</i>	16
SECTION 3.04. <i>Officers' Certificate</i>	16
SECTION 3.05. <i>Calculation of Original Issue Discount</i>	17
ARTICLE 4 HOLDERS' LISTS AND REPORTS BY THE COMPANY	17
SECTION 4.01. <i>Company to Furnish Trustee Information as to Names and Addresses of Holders</i>	17
SECTION 4.02. <i>Preservation and Disclosure of Holders' Lists</i>	17
SECTION 4.03. <i>Reports by the Company</i>	18
ARTICLE 5 REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT	18
SECTION 5.01. <i>Event of Default Defined; Acceleration of Maturity; Waiver of Default</i>	18
SECTION 5.02. <i>Collection of Indebtedness by Trustee; Trustee May Prove Debt</i>	21
SECTION 5.03. <i>Application of Proceeds</i>	22
SECTION 5.04. <i>Restoration of Rights on Abandonment of Proceedings</i>	23
SECTION 5.05. <i>Limitations on Suits by Holders</i>	23
SECTION 5.06. <i>Unconditional Right of Holders to Institute Certain Suits</i>	23
SECTION 5.07. <i>Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default</i>	24

SECTION 5.08.	<i>Control by Holders</i>	24
SECTION 5.09.	<i>Waiver of Past Defaults</i>	24
SECTION 5.10.	<i>Right of Court to Require Filing of Undertaking to Pay Costs</i>	25
SECTION 5.11.	<i>Suits for Enforcement</i>	25
ARTICLE 6 CONCERNING THE TRUSTEE		25
SECTION 6.01.	<i>Duties of Trustee</i>	25
SECTION 6.02.	<i>Rights of Trustee</i>	26
SECTION 6.03.	<i>Individual Rights of Trustee</i>	28
SECTION 6.04.	<i>Trustee's Disclaimer</i>	28
SECTION 6.05.	<i>Notice of Defaults</i>	28
SECTION 6.06.	<i>Reports by Trustee to Holders</i>	29
SECTION 6.07.	<i>Compensation and Indemnity</i>	29
SECTION 6.08.	<i>Replacement of Trustee</i>	30
SECTION 6.09.	<i>Successor Trustee by Merger</i>	31
SECTION 6.10.	<i>Eligibility; Disqualification</i>	31
SECTION 6.11.	<i>Preferential Collection of Claims Against Company</i>	31
ARTICLE 7 CONCERNING THE HOLDERS		31
SECTION 7.01.	<i>Evidence of Action Taken by Holders</i>	31
SECTION 7.02.	<i>Proof of Execution of Instruments</i>	31
SECTION 7.03.	<i> Holders to Be Treated as Owners</i>	32
SECTION 7.04.	<i>Securities Owned by Company Deemed Not Outstanding</i>	32
SECTION 7.05.	<i>Right of Revocation of Action Taken</i>	32
ARTICLE 8 SUPPLEMENTAL INDENTURES		33
SECTION 8.01.	<i>Supplemental Indentures Without Consent of Holders</i>	33
SECTION 8.02.	<i>Supplemental Indentures with Consent of Holders</i>	34
SECTION 8.03.	<i>Effect of Supplemental Indenture</i>	35
SECTION 8.04.	<i>Documents to Be Given to Trustee</i>	35
SECTION 8.05.	<i>Notation on Securities in Respect of Supplemental Indentures</i>	35
ARTICLE 9 CONSOLIDATION, MERGER, SALE OR CONVEYANCE		36
SECTION 9.01.	<i>Company May Consolidate, Etc. on Certain Terms</i>	36
SECTION 9.02.	<i>Successor Corporation Substituted</i>	36
SECTION 9.03.	<i>Opinion of Counsel to Trustee</i>	37
ARTICLE 10 SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE; UNCLAIMED FUNDS		37
SECTION 10.01.	<i>Satisfaction and Discharge of Indenture; Defeasance</i>	37
SECTION 10.02.	<i>Conditions to Defeasance</i>	38
SECTION 10.03.	<i>Application of Trust Funds</i>	38
SECTION 10.04.	<i>Repayment to Company</i>	38
SECTION 10.05.	<i>Indemnity for Government Obligations</i>	39
SECTION 10.06.	<i>Reinstatement</i>	39

ARTICLE 11 REDEMPTION OF SECURITIES AND SINKING FUNDS	39
SECTION 11.01. <i>Applicability of Article</i>	39
SECTION 11.02. <i>Notice of Redemption; Partial Redemptions</i>	39
SECTION 11.03. <i>Payment of Securities Called for Redemption</i>	41
SECTION 11.04. <i>Exclusion of Certain Securities from Eligibility for Selection for Redemption</i>	42
SECTION 11.05. <i>Repayment at the Option of the Holders</i>	42
ARTICLE 12 CONVERSION OF SECURITIES	42
SECTION 12.01. <i>Applicability of Article</i>	42
SECTION 12.02. <i>Right of Holders to Convert Securities into Common Shares</i>	42
SECTION 12.03. <i>Issuance of Common Shares on Conversions</i>	43
SECTION 12.04. <i>No Payment or Adjustment for Interest or Dividends</i>	44
SECTION 12.05. <i>Adjustment of Conversion Price</i>	44
SECTION 12.06. <i>No Fractional Shares to Be Issued</i>	47
SECTION 12.07. <i>Notice to Holders of the Securities of a Series Prior to Taking Certain Types of Action</i>	48
SECTION 12.08. <i>Covenant to Reserve Shares for Issuance on Conversion of Securities</i>	48
SECTION 12.09. <i>Compliance with Governmental Requirements</i>	49
SECTION 12.10. <i>Payment of Taxes upon Certificates for Shares Issued upon Conversion</i>	49
SECTION 12.11. <i>Trustee's Duties with Respect to Conversion Provisions</i>	49
SECTION 12.12. <i>Trustee Under No Duty to Monitor Stock Price or Calculations</i>	49
SECTION 12.13. <i>Conversion Arrangement on Call for Redemption</i>	50
ARTICLE 13 MISCELLANEOUS PROVISIONS	50
SECTION 13.01. <i>Incorporators, Shareholders, Officers and Directors of Company Exempt from Individual Liability</i>	50
SECTION 13.02. <i>Provisions of Indenture for the Sole Benefit of Parties and Holders</i>	51
SECTION 13.03. <i>Successors and Assigns of Company Bound by Indenture</i>	51
SECTION 13.04. <i>Notices and Demands on Company, Trustee and Holders</i>	51
SECTION 13.05. <i>Electronic Transmission to the Trustee</i>	52
SECTION 13.06. <i>Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein</i>	52
SECTION 13.07. <i>Payments Due on Saturdays, Sundays and Holidays</i>	53
SECTION 13.08. <i>Conflict of any Provision of Indenture with Trust Indenture Act</i>	53
SECTION 13.09. <i>New York Law to Govern</i>	53
SECTION 13.10. <i>Counterparts</i>	53
SECTION 13.11. <i>Effect of Headings; Gender</i>	54
SECTION 13.12. <i>Waiver of Jury Trial</i>	54
SECTION 13.13. <i>Force Majeure</i>	54
SECTION 13.14. <i>Certain Tax Information</i>	54

INDENTURE

This INDENTURE (this “**Indenture**”), dated as of _____, 20__, is by and between EASTMAN KODAK COMPANY, a New Jersey corporation (the “**Company**”), and [_____,] a [_____,] as trustee (the “**Trustee**”).

RECITALS

A. The Company has duly authorized the issue from time to time of its debentures, notes or other evidences of indebtedness (the “**Securities**”) to be issued in one or more Series.

B. All things necessary to make this Indenture a valid, legally binding indenture and agreement according to its terms have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed for the equal and ratable benefit of the Holders from time to time of the Securities or of Series thereof as follows.

ARTICLE 1 DEFINITIONS

SECTION 1.01. *Certain Terms Defined.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms (except as herein otherwise expressly provided or unless the context otherwise clearly requires) used in this Indenture that are defined in the Trust Indenture Act or the definitions of which in the Securities Act are referred to in the Trust Indenture Act, including terms defined therein by reference to the Securities Act, shall have the meanings assigned to such terms in the Trust Indenture Act and the Securities Act as in force at the date of this Indenture. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with GAAP. The words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to this Indenture as a whole, as supplemented and amended from time to time, and not to any particular Article, Section or other subdivision. The terms defined in this Article 1 have the meanings assigned to them in this Article 1 and include the plural as well as the singular.

“**Board of Directors**” means either the Board of Directors of the Company or any duly authorized committee of that Board or any duly authorized committee created by that Board.

“**Business Day**”, except as may otherwise be provided in the form of Securities of any particular Series, with respect to any Place of Payment or place of publication means any day, other than a Saturday, Sunday or day on which banking institutions are authorized or required by law or regulation to close in that Place of Payment or place of publication.

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

“**Common Shares**” means the shares of common stock, par value \$0.01 per share, of the Company, collectively as they exist on the date of this Indenture, or any other shares of the Company into which such shares shall be reclassified or changed.

“**Company**” means the Person identified as the “Company” in the first paragraph hereof until a successor company shall have become such pursuant to the applicable provisions hereof, and thereafter “Company” shall mean such successor company.

“**Corporate Trust Office**” means the principal corporate trust office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located at [_____] or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“**covenant defeasance option**” has the meaning specified in Section 10.01(b).

“**defaulted interest**” has the meaning specified in Section 2.07.

“**Depository**”, with respect to Securities of any Series for which the Company shall determine that such Securities will be issued as a Depository Security, means The Depository Trust Company or another clearing agency or any successor registered under the Securities Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to Sections 2.03 and 2.13.

“**Depository Security**”, with respect to any Series of Securities, means 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 this Indenture and pursuant to a resolution of the Board of Directors or an indenture supplemental hereto as contemplated by Section 2.03, which shall be registered as to principal and interest in the name of the Depository or its nominee and shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such Series.

“**Event of Default**” has the meaning specified in Section 5.01.

“**Federal Income Tax**” means United States federal income tax.

“**GAAP**” means such accounting principles as are generally accepted at the time of any computation hereunder.

“**Government Obligations**”, unless otherwise specified pursuant to Section 2.03, means securities that are (i) direct obligations of the United States government or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, the United

States government, the payment of which obligations is unconditionally guaranteed by such government, and that, in either case, are full faith and credit obligations of such government and are not callable or redeemable at the option of the issuer thereof.

“**Holder**”, “**Holder of Securities**”, “**Registered Holder**”, or other similar terms mean the Person in whose name at the time a particular Security is registered in the Security register.

“**Indenture**” means this instrument as originally executed or as it may from time to time be amended or supplemented as herein provided, as so amended or supplemented or both, and shall include the forms and terms of particular Series of Securities established as contemplated by Section 2.03.

“**Internal Revenue Service**” means the United States Internal Revenue Service or a successor entity thereto.

“**legal defeasance option**” has the meaning specified in Section 10.01(b).

“**Nasdaq Market**” has the meaning specified in Section 12.05(e).

“**Officers’ Certificate**” means a certificate signed on behalf of the Company by any two authorized officers of the Company and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 13.06.

“**Opinion of Counsel**” means a written opinion of legal counsel who may be an employee of or counsel to the Company. Each Opinion of Counsel shall include the statements provided for in Section 13.06, if and to the extent required hereby.

“**original issue date**” of any Security means the date set forth as such on such Security.

“**Original Issue Discount Security**” means any Security that 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 5.01.

“**Outstanding**”, when used with reference to Securities of any Series as of any particular time, subject to the provisions of Section 7.04, means all Securities of that Series authenticated and delivered under this Indenture, except:

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

(b) Securities, or portions thereof, for the payment or redemption of which the necessary funds in the required currency shall have been deposited in trust with the Trustee or with any Paying Agent other than the Company, or shall have been set aside, segregated and held in trust by the Company for the holders of such Securities if the Company shall act as its own Paying Agent, provided that if such securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice;

(c) Securities in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.10, except with respect to any such Security as to which proof satisfactory to the Trustee and the Company is presented that such Security is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company;

(d) Securities converted into other securities of the Company in accordance with or as contemplated by this Indenture; and

(e) Securities with respect to which the Company has effected defeasance as provided in Article 10.

“Paying Agent” means any Person, which may include the Company, authorized by the Company to pay the principal of or interest, if any, on any Security of any Series on behalf of the Company.

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

“Place of Payment”, when used with respect to the Securities of any Series, means the place or places where the principal of and interest on the Securities of that Series are payable as specified pursuant to Section 3.02.

“Preferred Shares” means any shares issued by the Company that are entitled to a preference or priority over the Common Shares upon any distribution of the Company’s assets, whether by dividend or upon liquidation.

“principal” whenever used with reference to the Securities or any Security or any portion thereof shall be deemed to include “and premium, if any.”

“record date” has the meaning specified in Section 2.07.

“Responsible Officer”, when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, senior trust officer, trust officer or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities Act” means the Securities Act of 1933, as amended, as in force at the date as of which this Indenture was originally executed.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended, as in force at the date as of which this Indenture was originally executed.

“**Security**” or “**Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any securities authenticated and delivered under this Indenture.

“**Security register**” has the meaning specified in Section 2.08.

“**Series**” or “**Series of Securities**” means all Securities of a similar tenor authorized by a particular resolution of the Board of Directors or in one or more indentures supplemental hereto.

“**Subsidiary**” means: (i) a corporation in which the Company and/or one or more Subsidiaries of the Company directly or indirectly owns, at the date of determination, a majority of the capital stock with voting power under ordinary circumstances to elect directors; (ii) a partnership, limited liability company, joint venture or similar entity in which the Company and/or one or more Subsidiaries of the Company directly or indirectly holds, at the date of determination, a majority interest in the equity capital or profits or other similar interests of such entity; or (iii) any other unincorporated Person in which the Company and/or one or more Subsidiaries of the Company directly or indirectly owns at the date of determination (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

“**Trading Day**” has the meaning specified in Section 12.05(e).

“**Trust Indenture Act**”, except as otherwise provided in Sections 8.01 and 8.02, means the Trust Indenture Act of 1939, as amended, as in force at the date as of which this Indenture was originally executed.

“**Trustee**” means the Person identified as the “Trustee” in the first paragraph hereof until a successor Trustee shall have become such pursuant to the applicable provisions hereof, and thereafter “Trustee” shall mean each Person who is then a Trustee hereunder. If at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series means the Trustee with respect to Securities of that Series.

“**vice president**” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title of “vice president.”

ARTICLE 2 SECURITIES

SECTION 2.01. *Forms Generally.* The Securities of each Series shall be substantially in such form, including temporary or definitive global form, as shall be established by or pursuant to a resolution of the Board of Directors or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities as evidenced by their execution of the Securities.

The definitive Securities may be printed or reproduced in any other manner, all as determined by the officers executing such Securities as evidenced by their execution of such Securities.

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

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

Dated: _____

_____, as Trustee

By: _____
Authorized Signatory

— or —

_____, as Trustee

By: _____, as
Authentication Agent

By: _____
Authorized Signatory

SECTION 2.03. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more Series. There shall be established in or pursuant to a resolution of the Board of Directors and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any Series:

(a) the title of the Securities of the Series (including CUSIP numbers), which shall distinguish the Securities of the Series from all other Securities issued by the Company;

(b) any limit upon the aggregate principal amount of the Securities of the Series that may be authenticated and delivered under this Indenture, except for Securities authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, other Securities of the Series pursuant to Section 2.08, 2.10, 2.12, 8.05 or 11.03;

(c) the price at which the Securities of the Series will be issued;

(d) if other than 100% of the principal amount, the portion of the principal amount payable upon maturity of the Securities of the Series;

(e) the date or dates on which the principal of the Securities of the Series is payable or the method of determination thereof;

(f) the rate or rates, which may be fixed or variable, or the method or methods of determination thereof, at which the Securities of the Series shall bear interest (including any interest rates applicable to overdue payments), if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable, the record dates for the determination of Holders to whom interest is payable and the dates on which any other amounts, if any, will be payable;

(g) the place or places where the principal of, premium and other amounts, if any, and interest, if any, on Securities of the Series shall be payable if other than as provided in Section 3.02;

(h) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

(i) the obligation, if any, of the Company to redeem, purchase or repay Securities of the Series whether pursuant to any sinking fund or analogous provisions or pursuant to other provisions set forth therein or at the option of a Holder thereof and the price or prices at which and the period or periods within which and the terms and conditions upon which Securities of the Series shall be redeemed, purchased or repaid, in whole or in part;

(j) the denominations in which Securities of the Series shall be issuable;

(k) the form of the Securities, including such legends as required by law or as the Company deems necessary or appropriate and the form of any temporary global security that may be issued;

(l) whether, and under what circumstances, the Securities of any Series shall be convertible into other securities of the Company and, if so, the terms and conditions upon which such conversion will be effected, including the initial conversion price or rate, the conversion period and other provisions in addition to or in lieu of those described herein;

- (m) whether there are any authentication agents, Paying Agents, transfer agents or registrars with respect to the Securities of such Series;
- (n) whether the Securities of such Series are to be issuable in whole or in part by one or more global notes registered in the name of a Depository or its nominee;
- (o) the ranking of the Securities of such Series as senior debt securities or subordinated debt securities;
- (p) if other than U.S. dollars, the currency or currencies (including composite currencies or currency units) in which the Securities of any Series may be purchased and in which payments on the Securities of such Series will be made (which currencies may be different for payments of principal, premium or other amounts, if any, and/or interest, if any);
- (q) if the Securities of any Series will be secured by any collateral, a description of the collateral and the terms and conditions of the security and realization provisions;
- (r) the provisions relating to any guarantee of the Securities of any Series, including the ranking thereof;
- (s) the ability, if any, to defer payments of principal, interest, or other amounts; and
- (t) any other specific terms or conditions of the Securities of any Series, including any additional Events of Default or covenants provided for with respect to the Securities of such Series, and any terms that may be required by or advisable under applicable laws or regulations.

All Securities of any one Series shall be substantially identical except as to denomination and except as otherwise may be provided in or pursuant to such resolution of the Board of Directors or in any such indenture supplemental hereto. The Securities of any one Series need not be issued at the same time, and unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series.

SECTION 2.04. *Authentication and Delivery of Securities.* 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, and the Trustee shall thereupon authenticate and make available for delivery such Securities to or upon the written order of the Company, signed by both (y) the chairman of its Board of Directors, or its president or any vice president, and (z) its treasurer or any assistant treasurer or its secretary or any assistant secretary. At the time of the authentication of a Series of Securities, or the first authentication of a Series of Securities that provides for the issuance of Securities of that Series from time to time, and accepting the additional responsibilities under this Indenture in relation to any such Series of Securities, the Trustee shall be provided with and subject to Section 6.01 shall be fully protected in relying upon:

(a) a copy of any resolution or resolutions of the Board of Directors relating to such Series, in each case certified by the secretary or an assistant secretary of the Company;

(b) a supplemental indenture, if any;

(c) an Officers' Certificate setting forth the form and terms of the Securities of such Series as required pursuant to Sections 2.01 and 2.03, respectively, and prepared in accordance with Section 13.06; and

(d) an Opinion of Counsel, prepared in accordance with Section 13.06, which shall state:

(i) that the form or forms and terms of such Series of Securities have been established by or pursuant to a resolution of the Board of Directors or by a supplemental indenture as permitted by Sections 2.01 and 2.03 in conformity with the provisions of this Indenture;

(ii) that such Series of Securities has been duly authorized and, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such opinion of counsel, the Securities of such Series will constitute valid and binding obligations of the Company enforceable, in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(iii) that all conditions precedent to the execution and delivery by the Company of such Series of Securities have been complied with.

The Trustee shall have the right to decline to authenticate and deliver any Series of Securities under this Section 2.04 if the issue of such Series of Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under this Indenture in a manner not reasonably acceptable to the Trustee.

SECTION 2.05. *Execution of Securities.* The Securities shall be signed on behalf of the Company by both (a) the chairman of its Board of Directors or its president or any vice president and (b) its treasurer or any assistant treasurer or its secretary or any assistant secretary. Such signatures may be the manual or facsimile signatures of such officers. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities. Typographical and other minor errors or defects in any such reproduction of the seal or any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

In case any officer of the Company who shall have signed any of the Securities shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed such Security had not ceased to be such officer of the Company. Any Security may be signed on behalf of the Company by such individuals as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution and delivery of this Indenture any such individual was not such an officer.

SECTION 2.06. *Certificate of Authentication.* Only such Securities as shall bear thereon a certificate of authentication substantially in the form set forth in Section 2.02 and executed by the Trustee by the manual signature of one of its authorized signatories shall be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder.

SECTION 2.07. *Denomination and Date of Securities; Payments of Interest.* The Securities shall be issuable in denominations as shall be specified as contemplated by Section 2.03. In the absence of any such specification with respect to the Securities of any Series, Securities shall be issuable in denominations of \$1,000 and any integral multiple thereof, and interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Securities shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by its execution and authentication thereof.

Each Security shall be dated the date of its authentication.

Unless otherwise provided as contemplated by Section 2.03, interest on any Security that is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the person in whose name that Security (or one or more predecessor securities) is registered at the close of business on the regular record date for the payment of such interest.

The term “**record date**” as used with respect to any interest payment date (except for a date for payment of defaulted interest) means the date specified as such in the terms of the Securities of any particular Series or, if no such date is so specified, the close of business on the

fifteenth day preceding such interest payment date, whether or not such record date is a Business Day.

Any interest on any Security of any Series that is payable but not punctually paid or duly provided for (“**defaulted interest**”) on any interest payment date shall forthwith cease to be payable to the Registered Holder on the relevant record date by virtue of such Holder having been a Holder on such record date. Such defaulted interest may be paid by the Company, at its election in each case, as provided in clause (a) or clause (b) below:

(a) The Company may elect to make payment of any defaulted interest to the persons in whose names any such Securities (or their respective predecessor Securities) are registered at the close of business on a special record date for the payment of such defaulted interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security of such Series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee funds 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 funds when deposited shall be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this clause (a). Thereupon the Trustee shall fix a special record date for the payment of such defaulted interest in respect of Securities of such Series, which shall be not more than 15 nor less than ten days prior to the date of the proposed payment and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Trustee promptly shall 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 thereof to be mailed, first class postage prepaid, to each Registered Holder at his address as it appears in the Security register, not less than ten days prior to such special record date. Notice of the proposed payment of such defaulted interest and the special record date therefor having been mailed as aforesaid, such defaulted interest in respect of Securities of such Series shall be paid to the persons in whose names such Securities (or their respective predecessor Securities) are registered on such special record date and such defaulted interest shall no longer be payable pursuant to the following clause (b).

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

Subject to the foregoing provisions of this Section 2.07, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 2.08. *Registration, Registration of Transfer and Exchange.* The Company will cause to be kept at each office or agency to be maintained for the purpose as provided in Section 3.02 a register or registers (the “**Security register**”) in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration and the registration of transfer of the Securities. The Trustee is hereby appointed Security registrar for purposes of registering, and registering transfers of, the Securities.

Upon surrender for registration of transfer of any Security of any Series at any such office or agency to be maintained for the purpose as provided in Section 3.02, the Company shall execute, and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees, a new Security or Securities of the same Series and of like tenor and containing the same terms (other than the principal amount thereof, if more than one Security is executed, authenticated and delivered with respect to any security so presented, in which case the aggregate principal amount of the executed, authenticated and delivered Securities shall equal the principal amount of the Security presented in respect thereof) and conditions.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of an amount sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 2.12, 8.05 or 11.03 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Security during the 15-day period prior to the day of mailing of the relevant notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, the portion thereof not redeemed.

SECTION 2.09. *Trustee’s Duties to Monitor Compliance.* The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among depository participants or beneficial owners of interests in any global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.10. *Mutilated, Defaced, Destroyed, Lost and Stolen Securities.* Unless otherwise specified as contemplated by Section 2.03 of any Series, in case any temporary or definitive Security shall become mutilated or defaced or be destroyed, lost or stolen, the Company shall execute, and upon the written request of any officer of the Company, the Trustee shall authenticate and make available for delivery a new Security of the same Series and of like tenor and principal amount and with the same terms and conditions, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security or in lieu of and substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of any substitute Security, the Company may require the payment of an amount sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including the reasonable fees and expenses of the Trustee, connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company, instead of issuing a substitute Security, may pay or authorize the payment of the same without surrender thereof except in the case of a mutilated or defaced Security. The applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as any of them may require to save each of them harmless. In every case of destruction, loss or theft, the applicant also shall furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to the provisions of this Section 2.10 by virtue of the fact that any Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of and shall be subject to all the limitations of rights set forth in this Indenture equally and proportionately with any and all other Securities duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies, notwithstanding any law or statute to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.11. *Cancellation of Securities.* All Securities surrendered for payment, redemption, registration of transfer or exchange, or for credit against any payment in respect of a sinking or analogous fund, if surrendered to the Company or any agent of the Company or the Trustee shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled by it in accordance with its customary procedures; and no Securities shall be issued in lieu thereof except as expressly permitted by the provisions of this Indenture. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which

the Company has not issued and sold and all Securities so delivered shall be promptly cancelled by the Trustee. The Trustee shall return cancelled Securities held by it to the Company, upon written request. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation.

SECTION 2.12. *Temporary Securities.* Pending the preparation of definitive Securities for any Series, the Company may execute and the Trustee shall authenticate and make available for delivery temporary Securities for such Series, which may be printed, typewritten or otherwise reproduced, in each case in form reasonably acceptable to the Trustee. Temporary Securities of any Series may be issued in any authorized denomination and substantially in the form of the definitive Securities of such Series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the reasonable concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such Series and thereupon temporary Securities of such Series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for that purpose pursuant to Section 3.02, and the Trustee shall authenticate and make available for delivery in exchange for such temporary Securities of such Series a like aggregate principal amount of definitive Securities of the same Series of authorized denominations. Until so exchanged, the temporary Securities of any Series shall be entitled to the same benefits under this Indenture as definitive Securities of such Series.

SECTION 2.13. *Securities in Global Form.* If Securities of a Series are issuable in global form, as specified as contemplated by Section 2.03, such global form of Security shall represent such of the Outstanding Securities of such Series as shall be specified therein and may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby may be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified therein or in the Company order to be delivered to the Trustee pursuant to Section 2.04. Subject to the provisions of Section 2.04, the Trustee shall deliver and redeliver any Security in definitive global form in the manner and upon written instructions given by the Person or Persons specified therein or in the applicable Company order. If a Company order pursuant to Section 2.04 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing.

Unless otherwise specified as contemplated by Section 2.03, payment of principal of and any interest on any Security in definitive global form shall be made to the Person or Persons specified therein.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of or interest on such Security and for all other purposes whatsoever, whether or not such Security shall be overdue, and neither the Company, the Trustees nor any agent of the Company or the Trustee will be affected by notice to the contrary.

If The Depository Trust Company is at any time unwilling or unable to continue as Depository or if at any time The Depository Trust Company ceases to be a clearing agency registered under the Securities Exchange Act if so required by applicable law or regulation, and, in either case, a successor Depository is not appointed within 90 days, certificated Securities will be issued in exchange for the global Securities. In addition, the Company may determine, at any time and subject to the procedures of The Depository Trust Company, not to have any Securities represented by one or more global Securities, and, in such event, shall issue individual Securities in certificated form in exchange for the relevant global Securities. Beneficial interests in global Securities will be exchangeable for individual Securities in certificated form in the event of a default or an Event of Default, upon prior written notice to the Trustee by or on behalf of The Depository Trust Company or at the written request of the owner of such beneficial interests, in each case, in accordance with the terms hereof. In any of the foregoing circumstances, an owner of a beneficial interest in a global Security shall be entitled to physical delivery of individual Securities in certificated form of like tenor and rank, equal in principal amount to such beneficial interest, and to have such Securities in certificated form registered in its name.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by The Depository Trust Company or any other Depository.

SECTION 2.14. *CUSIP Numbers.* The Company in issuing the Securities may use CUSIP numbers if then generally in use and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders. Any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities. No such redemption shall be affected by any defect in or omission of such numbers. The Company promptly will notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3 COVENANTS OF THE COMPANY

SECTION 3.01. *Payment of Principal and Interest.* The Company covenants and agrees for the benefit of each particular Series of Securities that it will duly and punctually pay or cause to be paid the principal of, and interest on, each of the Securities of such Series in accordance with the terms of the Securities of such Series and this Indenture.

SECTION 3.02. *Offices for Payment, Etc.* So long as any of the Securities remain outstanding, the Company will maintain for each Series an office or agency where the Securities may be presented for payment

or conversion, where the Securities may be presented for registration of transfer and for exchange and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. In case the Company shall fail to so designate or maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the Corporate Trust Office. Unless otherwise specified pursuant to Section 2.03, the Trustee is hereby appointed Paying Agent.

SECTION 3.03. *Paying Agents.* Whenever the Company shall appoint a Paying Agent other than the Trustee with respect to the Securities of any Series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Agent shall agree with the Trustee, subject to the provisions of this Section 3.03:

(a) that it will hold all amounts received by it as such Paying Agent for the payment of the principal of or interest on the Securities of such Series in trust for the benefit of the Holders of the Securities of such Series and, upon the occurrence of an Event of Default and upon the written request of the Trustee, pay over all such amounts received by it to the Trustee; and

(b) that it will give the Trustee notice of any failure by the Company or by any other obligor on the Securities of such Series to make any payment of the principal of or interest on the Securities of such Series when the same shall be due and payable.

On or prior to each due date of the principal of or interest on the Securities of such Series, the Company will deposit with the Paying Agent sufficient funds to pay such principal or interest so becoming due and, unless such Paying Agent is the Trustee, notify the Trustee of any failure to take such action.

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

At any time, for the purpose of obtaining a satisfaction and discharge with respect to one or more or all Series of Securities or for any other reason, the Company may pay or cause to be paid to the Trustee all amounts held in trust for any such Series by the Company or any Paying Agent, such amounts to be held by the Trustee in trust pursuant to this Indenture.

The agreement to hold amounts in trust as provided in this Section 3.03 is subject to the provisions of Sections 10.03 and 10.04.

SECTION 3.04. *Officers' Certificate.* The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate indicating whether the officers signing such Officers' Certificate on behalf of the Company know of any default with respect to the Company's

compliance with all conditions or covenants under the Securities of any Series. The Company also shall deliver to the Trustee, within 30 days after obtaining knowledge of the occurrence thereof, written notice of any Event of Default with respect to the Securities of any Series, the status thereof and what action the Company is taking or proposes to take in respect thereof.

SECTION 3.05. *Calculation of Original Issue Discount.* The Company shall file with the Trustee, within 30 days after the end of each calendar year, a written notice specifying the amount of original issue discount, if any, including daily rates and accrual periods, accrued on each Series of Outstanding Original Issue Discount Securities as of the end of such year.

ARTICLE 4 HOLDERS' LISTS AND REPORTS BY THE COMPANY

SECTION 4.01. *Company to Furnish Trustee Information as to Names and Addresses of Holders.* Unless otherwise contemplated by Section 2.03 for the Securities of any Series, the Company will furnish or cause to be furnished to the Trustee a list in such form as the Trustee reasonably may require of the names and addresses of the Holders of the Securities of each Series:

- (a) semiannually, and not more than 15 days after each record date for the payment of interest on such Securities, as of such record date; and
 - (b) at such other times as the Trustee reasonably may request in writing, within 30 days after receipt by the Company of any such request, such list to be as of a date not more than 15 days prior to the time such information is furnished;
- provided that, if the Trustee shall be the Security registrar for such Series, such list shall not be required to be furnished.

SECTION 4.02. *Preservation and Disclosure of Holders' Lists.*

(a) The Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 4.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) The rights of the Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, will be as provided by Section 312(b) of the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them will be held accountable by reason of any disclosure of information as to names and addresses of Holders made in accordance with the Trust Indenture Act.

SECTION 4.03. *Reports by the Company.* So long as any Securities are outstanding, the Company will file with the Trustee, within 15 days after it files them with the Commission, copies of its annual report and the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act. The Company shall be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the Commission via EDGAR (or any successor electronic delivery procedure). The Company shall also comply with the other provisions of Section 314(a) of the Trust Indenture Act.

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

ARTICLE 5 REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

SECTION 5.01. *Event of Default Defined; Acceleration of Maturity; Waiver of Default.* "**Event of Default**", with respect to Securities of any Series, means, unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, any one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) unless it is either inapplicable to a particular Series or it is specifically deleted or modified in or pursuant to the supplemental indenture or resolution of the Board of Directors establishing such Series of Securities or in the form of Security for such Series:

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

(b) default in the payment of all or any part of the principal of any of the Securities of such Series as and when the same shall become due and payable, either at maturity, upon any redemption or repurchase, by declaration or otherwise;

(c) default in the performance or breach of any covenant or warranty contained in the Securities of such Series or in this Indenture (other than (x) the failure to comply with any covenant or agreement contained in Section 314(a)(1) of the Trust Indenture Act or Section 4.03 or (y) a default in the performance or breach of a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 5.01 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more Series of Securities other than that Series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that Series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder;

(d) the Company (i) pursuant to or within the meaning of any bankruptcy law commences a voluntary case, consents to the entry of an order for relief against it in an involuntary case, consents to the appointment of a custodian of it or for any substantial part of its property, or makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency; or (ii) a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against the Company in an involuntary case, appoints a custodian of the Company or for any substantial part of its property, or orders the winding up or liquidation of the Company or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 90 days; or

(e) any other Event of Default (including Events of Default replacing or supplementing the foregoing) provided with respect to Securities of such Series in the supplemental indenture or resolution of the Board of Directors establishing such Series.

Any failure to perform, or breach of, any covenant or agreement of the Company in respect of the Securities of such Series contained in Section 314(a)(1) of the Trust Indenture Act or Section 4.03 shall not be a default or an Event of Default. Remedies against the Company for any such failure or breach will be limited to liquidated damages as described in the following sentence, and Holders shall not have any right to accelerate the maturity of the Securities of such Series as a result of any such failure or breach. Instead, if there is such a failure or breach of the Company’s obligation under Section 314(a)(1) of the Trust Indenture Act or Section 4.03 and continuance of such failure or breach for a period of 90 days after the date on which there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of all Series affected thereby, a written notice specifying such failure or breach and requiring it to be remedied and stating that such notice is a “Notice of Reporting Noncompliance” hereunder, the Company will pay liquidated damages to all Holders of Securities of such Series, at a rate per year equal to 0.25% of the principal amount of such Securities from the 90th day following such notice to and including the 150th day following such notice and at a rate per year equal to 0.5% of the principal amount of such Securities from and including the 151st day following such notice, until such failure or breach is cured. Any such liquidated damages shall be payable in the same manner and on the same dates as the stated interest payable on the Securities of such Series. In the event that the Company is required to pay such liquidated damages, the Company

shall provide a written notice to the Trustee (and if the Trustee is not the paying agent, the paying agent) no later than five Business Days prior to the payment date for the payment of such liquidated damages setting forth the amount of such liquidated damages to be paid by the Company on such payment date and directing the Trustee (or, if the Trustee is not the paying agent, the paying agent) to make such payment to the extent it receives funds from the Company to do so. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether such liquidated damages are payable, or with respect to the nature, extent or calculation of the amount of liquidated damages owed.

If an Event of Default occurs under clause (d) above, the principal of and interest on the Securities of each Outstanding Series shall become immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, if an Event of Default (other than an Event of Default occurring as a result of clause (d)) with respect to the Securities of any Series shall have occurred and be continuing, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such Series then Outstanding by notice to the Company may declare the principal amount of all the Securities of such Series and accrued and unpaid interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable. This provision, however, is subject to the condition that if at any time after the principal of the Securities of such Series shall have been so declared due and payable, and before any judgment or decree for the payment of the amounts due shall have been obtained or entered as hereinafter provided, the Company shall have paid or deposited with the Trustee sufficient funds to pay all matured installments of interest, if any, upon all the Securities of such Series and the principal of the Securities of such Series that shall have become due other than by such acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, upon overdue installments of interest, at the rate borne by the Securities of such Series to the date of such payment or deposit) and all other defaults under this Indenture, other than the nonpayment of the principal of Securities of such Series that shall have become due by such acceleration, shall have been remedied, then and in every such case the Holders of a majority in aggregate principal amount at maturity of the Securities of such Series then Outstanding, by written notice to the Company and to the Trustee for the Securities of such Series, may waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

Subject to the provisions of Article 6, in case an Event of Default with respect to the Securities of any Series shall occur and be continuing, the Trustee shall not be under any obligation to exercise any of the trusts or powers vested in it hereby at the request or direction of any Holder of such Series, unless such Holder shall have offered to such Trustee security or indemnity reasonably satisfactory to it.

Additional terms and conditions with respect to the rights of Holders of the Securities of a particular Series (including as to rights to rescind an acceleration of the payment of principal and interest) and the rights and obligations of the Trustee, in each case, in connection with a

default or Event of Default, may be specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 5.02. *Collection of Indebtedness by Trustee; Trustee May Prove Debt.* If the Company shall fail to pay any installment of interest on any of the Securities of any Series when such interest shall have become due and payable, and such default shall have continued for a period of 30 days, or shall fail to pay the principal of any of the Securities of any Series when the same shall have become due and payable, whether upon maturity of the Securities of such Series or upon any redemption or by declaration or otherwise, then upon demand of the Trustee for the Securities of such Series the Company will pay to the Trustee for the Securities of such Series for the benefit of the Holders of the Securities of such Series the whole amount that then shall have become due and payable on all Securities of such Series for principal of or interest, as the case may be (with interest to the date of such payment upon the overdue principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series) and such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to and expenses incurred by the Trustee and its respective agents, attorneys and counsel.

Until such demand is made by the Trustee, the Company may pay the principal of and interest on the Securities of any Series to the persons entitled thereto, whether or not the principal of and interest on the Securities of such Series are overdue.

If the Company shall fail to pay such amounts upon such demand, the Trustee for the Securities of such Series, 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 amounts so due and unpaid. In any such case, the Trustee may prosecute any such action or proceedings to judgment or final decree and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company, wherever situated, the amounts adjudged or decreed to be payable.

If (i) there shall be pending proceedings relative to the Company under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or other similar law, (ii) a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or its property or (iii) any other comparable judicial proceedings relative to the Company under the Securities of any Series, or to the creditors or property of the Company, shall be pending, and irrespective of whether the principal of any Securities shall then be due and payable or whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Securities of any Series and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to, and expenses incurred by, the Trustee, and its agents, attorneys and counsel) and of the Holders allowed in any

judicial proceedings relative to the Company, or to the creditors or property of the Company; and

(b) to collect and receive any funds or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders and of the Trustee on their behalf; and any trustee, receiver, or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee for the Securities of such Series, and, in the event that such Trustee shall consent to the making of payments directly to the Holders, to pay to such Trustee such amounts as shall be sufficient to cover reasonable compensation to and expenses incurred by such Trustee and its respective agents, attorneys and counsel and all other amounts due to such Trustee pursuant to Section 6.07.

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

All rights of action and of asserting claims under this Indenture or under any of the Securities may be enforced by the Trustee for the Securities of such Series without the possession of any of the Securities of such Series or the production thereof at any trial or other proceedings relative thereto. Any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Securities in respect of which such action was taken.

In any proceedings brought by the Trustee for the Securities of such Series, the Trustee shall be held to represent all the Holders of the Securities in respect of which such action was taken, and it shall not be necessary to make any Holders of such Securities parties to any such proceedings.

SECTION 5.03. *Application of Proceeds.* Any amounts collected by the Trustee for the Securities of such Series pursuant to this Article 5 in respect of the Securities of any Series shall be applied in the following order at the date or dates fixed by such Trustee and, in case of the distribution of such amounts on account of principal or interest, upon presentation of the several Securities in respect of which amounts have been collected and stamping or otherwise noting thereon the payment, or issuing Securities of such Series in reduced principal amounts in exchange for the presented Securities of like Series if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses applicable to such Series in respect of which amounts have been collected, including reasonable compensation to and expenses incurred by the Trustee, each predecessor Trustee and their respective agents and attorneys and all other amounts due to the Trustee pursuant to Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of and interest on the Securities of such Series in respect of which amounts have been collected, such payments to be made ratably to the persons entitled thereto, without discrimination or preference, according to the amounts then due and payable on such Securities and any such debt for principal and interest; and

THIRD: To the payment of the remainder, if any, to the Company or as a court of competent jurisdiction may direct.

SECTION 5.04. *Restoration of Rights on Abandonment of Proceedings.* If the Trustee for the Securities of any Series shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Company and the Trustee, subject to the determination in any such proceeding, shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

SECTION 5.05. *Limitations on Suits by Holders.* 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 action or proceeding at law or in equity or in bankruptcy or otherwise with respect to this Indenture, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official 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 and the Holders of not less than 25% in aggregate principal amount of the Securities of such Series then Outstanding shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee security or indemnity satisfactory to it 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 security or indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by Holders of a majority in principal amount of the Securities of such Series then Outstanding; it being understood and intended, and being expressly covenanted by the Holder of every Security with every other Holder of a Security and the Trustee, that no one or more Holders of Securities of any Series shall have any right in any manner whatever, by virtue or by availing of any provision of this Indenture, to affect, disturb or prejudice the rights of any other such Holder of 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 the applicable Series.

SECTION 5.06. *Unconditional Right of Holders to Institute Certain Suits.* Notwithstanding any provision in this Indenture and any provision of any Security of such Series, the right of any Holder of any Security to receive payment of the principal of and (subject to Section 2.07) interest on such Security at the respective rates, in the respective amount on or after the respective due dates expressed in such Security of such Series, or to institute suit for the

enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 5.07. *Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default.* Except as provided in Sections 2.10 and 5.05, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder 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 Event of Default or an acquiescence therein. Subject to Section 5.05, every power and remedy given by this Indenture or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or the Holders.

SECTION 5.08. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Securities of each Series affected at the time Outstanding 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 by this Indenture on the Trustee with respect to the Securities of such Series. The Trustee shall have the right to decline to follow any such direction if (i) such direction shall conflict with law or the provisions of this Indenture or any indenture supplemental hereto, (ii) the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability or (iii) the Trustee in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities of all Series so affected not joining in the giving of said direction, it being understood that the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

SECTION 5.09. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Securities of such Series at the time Outstanding, on behalf of the Holders of all the Securities of such Series, may waive any past default hereunder or its consequences, except a default in the payment of the principal of or interest on any of the Securities of such Series.

Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 5.10. *Right of Court to Require Filing of Undertaking to Pay Costs.* Any court in its discretion may require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit. Any such court in its discretion may 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. The provisions of this Section 5.10 shall not apply, however, to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders of any Series holding in the aggregate more than 10% in aggregate principal amount of the Securities of such Series or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the due date expressed in such Security.

SECTION 5.11. *Suits for Enforcement.* If an Event of Default has occurred, has not been waived and is continuing, the Trustee in its discretion may 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 this 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.

ARTICLE 6 CONCERNING THE TRUSTEE

SECTION 6.01. *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing with respect to the Securities of any Series, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default with respect to the Securities of any Series:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the

Trustee and conforming to the requirements of this Indenture. However, 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 examine the certificates and opinions 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).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 6.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.08.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 6.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Amounts held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any amounts received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 6.02. *Rights of Trustee.*

(a) The Trustee may conclusively rely on, and shall be fully protected in relying upon, any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) Subject to the provisions of Section 6.01(c), the Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(d) Before the Trustee acts or refrains from acting, 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, suffered or omitted by it hereunder in good faith and in reliance thereon in accordance with such advice or Opinion of Counsel.

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

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

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, Officers' Certificate or other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(i) The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Company, except as otherwise set forth herein, but the Trustee may require of the Company full information and advice as to the performance of the covenants, conditions and agreements contained herein and shall be entitled in connection herewith to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default.

(k) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) 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 by the Trustee to act hereunder.

(m) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a written order of the Company and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution of the Board of Directors.

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

(o) The Trustee shall not be deemed to have notice of an Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such an Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

SECTION 6.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, registrar or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 6.10 and 6.11.

SECTION 6.04. *Trustee's Disclaimer.* The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities. The Trustee shall not be accountable for the Company's use of the proceeds from the Securities and shall not be responsible for any statement in any registration statement for the Securities filed with the Commission under the Securities Act (other than its Statement of Eligibility on Form T-1) or in the Indenture (other than its eligibility under Section 6.10) or the Securities (other than its certificate of authentication).

SECTION 6.05. *Notice of Defaults.* If a default occurs and is continuing with respect to the Securities of any Series and is known to the Trustee, the Trustee shall mail to each Holder of the Securities of such Series notice of such default within 90 days after the occurrence of such default. Except in the case of a default in the payment of the principal of, premium, if any, or interest on the Securities of any Series,

including payments pursuant to the redemption provisions of the Securities of such Series, the Trustee may withhold notice if and so long as a committee of its Responsible Officers in good faith determines that withholding such notice is in the interests of Holders of such Series.

SECTION 6.06. *Reports by Trustee to Holders.* So long as the Securities of any Series are Outstanding, within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Holder of any such Series and each other Person specified in Section 313(c) of the Trust Indenture Act a brief report dated as of such May 15 that complies with Section 313(a) of the Trust Indenture Act to the extent required thereby. The Trustee also shall comply with Section 313(b) of the Trust Indenture Act.

The Trustee will file a copy of each report, at the time of its mailing to Holders of any Series, with the Commission and each securities exchange on which the Securities of any Series are listed. The Company promptly will notify the Trustee whenever the Securities of any Series become listed on any securities exchange and of any delisting thereof.

SECTION 6.07. *Compensation and Indemnity.* The Company:

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

(b) will reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, including the reasonable compensation and expenses of its agents and counsel, except to the extent any such compensation or expense may be attributable to its own negligence or willful misconduct; and

(c) will indemnify the Trustee for, and to hold it harmless against, any loss, liability, claim, damage or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against or investigating any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section, except to the extent that any such loss, liability, damage, claim or expense is due to its own negligence or willful misconduct.

As security for the performance of the Company's obligations under this Section 6.07, the Trustee shall have a lien prior to the Securities on all funds or property held or collected by the Trustee, except for those funds that are held in trust to pay the principal of or interest, if any, on particular Securities.

“Trustee” for purpose of this Section 6.07 includes any predecessor trustee; provided that the negligence or willful misconduct of any Trustee shall not be attributable to any other Trustee.

The Company’s payment obligations pursuant to this Section 6.07 shall constitute additional indebtedness hereunder and shall survive the discharge and termination of this Indenture and resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a default specified in Section 5.01(d), such expenses, including reasonable fees and expenses of counsel, are intended to constitute expenses of administration under bankruptcy law.

SECTION 6.08. *Replacement of Trustee.* The Trustee may resign at any time with respect to Securities of one or more Series by so notifying the Company. No such resignation, however, shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 6.08. The Holders of a majority in aggregate principal amount of the Outstanding Securities of any Series may remove the Trustee with respect to such Series by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 6.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more Series, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee with respect to the Securities of such Series.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture with respect to the Securities of such Series. The successor Trustee shall mail a notice of its succession to Holders so affected. The retiring Trustee shall promptly transfer all funds and property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 6.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Outstanding Securities of each affected Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 6.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

SECTION 6.09. *Successor Trustee by Merger.* If the Trustee consolidates with, merges or converts into or transfers all or substantially all its corporate trust business or assets to another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

SECTION 6.10. *Eligibility; Disqualification.* The Trustee shall at all times satisfy the requirements of Section 310(a)(1) of the Trust Indenture Act. The Trustee shall have a combined capital and surplus of at least \$150,000,000 as set forth in its most recent published annual report of condition. Neither the Company nor any person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee hereunder. The Trustee shall comply with Section 310(b) of the Trust Indenture Act; provided, however, that there shall be excluded from the operation of Section 310(b)(1) of the Trust Indenture Act any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the Trust Indenture Act are met.

SECTION 6.11. *Preferential Collection of Claims Against Company.* The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated therein.

ARTICLE 7 CONCERNING THE HOLDERS

SECTION 7.01. *Evidence of Action Taken by Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by a specified percentage in principal amount of the Holders of any or all Series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Holders in person or by agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and, subject to Sections 6.01 and 6.02, conclusive in favor of the Trustee and the Company, if made in the manner provided in this Article 7.

(b) The ownership of Securities shall be proved by the Security register.

SECTION 7.02. *Proof of Execution of Instruments.* Subject to Sections 6.01 and 6.02, the execution of any instrument by a Holder or his agent or proxy may be proved in accordance with such reasonable

rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

SECTION 7.03. *Holders to Be Treated as Owners.* The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name any Security shall be registered upon the Security register for such Series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest on such Security and for all other purposes. Neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All payments made to any such person, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for amounts payable upon any such Security.

SECTION 7.04. *Securities Owned by Company Deemed Not Outstanding.* In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all Series have concurred in any direction, consent or waiver under this Indenture, Securities that are owned by the Company or any other obligor on the Securities with respect to which such determination is being made, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities with respect to which such determination is being made, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. For the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities.

SECTION 7.05. *Right of Revocation of Action Taken.* At any time prior to the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any Series specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article 7, may 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 Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of any Series specified in this Indenture in connection with such action shall be binding upon the Company, the Trustee and the

Holders of all the Securities affected by such action. This Section shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

ARTICLE 8
SUPPLEMENTAL INDENTURES

SECTION 8.01. *Supplemental Indentures Without Consent of Holders.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company, when authorized by a resolution of its Board of Directors, and the Trustee for the Securities of any Series from time to time and at any time may enter into an indenture or indentures supplemental hereto, which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof, in form satisfactory to such Trustee, for one or more of the following purposes:

(a) cure any ambiguity, omission, defect or inconsistency in the Indenture or in any supplemental indenture that 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 or under any supplemental indenture as the Board of Directors may deem necessary or desirable and that shall not materially and adversely affect the interests of the Holders of such Series of Securities;

(b) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company pursuant to Article 9;

(c) to convey, transfer, assign, mortgage or pledge any property or assets to the Trustee as security for the Securities of one or more Series;

(d) to add guarantees with respect to the Securities of any Series or to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the Holders of Securities of any Series and, if such additional covenants are to be for the benefit of less than all the Series of Securities, stating that such covenants are being added solely for the benefit of such Series, or to release any guarantee where such release is permitted by the applicable supplemental indenture;

(e) to establish the form or terms of Securities of any Series as permitted by Sections 2.01 and 2.03;

(f) to make any changes to comply with the Trust Indenture Act, or any amendment thereto, or to comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act; or

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or

facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.08.

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

Any supplemental indenture authorized by the provisions of this Section 8.01 may be executed without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 8.02.

SECTION 8.02. *Supplemental Indentures with Consent of Holders.* Except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series, with the consent (evidenced as provided in Article 7) of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each Series affected by such supplemental indenture, the Company (when authorized by a resolution of its Board of Directors) and the Trustee for such Series of Securities, from time to time and at any time, may enter into an indenture or indentures supplemental hereto, which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such Series. Except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series, no such supplemental indenture, however, shall, without the consent of each affected Holder of Securities of such Series:

(a) change the stated maturity date of any Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of any interest thereon, or reduce any amount payable on redemption or repurchase thereof, change the time at which the Securities of any Series may be redeemed, or impair or affect the right of any Holder to receive payment of principal of, and interest on, any Security or to institute suit for payment thereof or, if the Securities provide therefor, affect any right of repayment at the option of the Holder; or

(b) change the provisions of the Indenture that relate to modifying or amending the provisions of the Indenture described above.

This Indenture may not be amended to alter the subordination of any of the Outstanding Securities of any Series without the written consent of each holder of Senior Indebtedness then outstanding that would be adversely affected thereby, such written consent to be accompanied by an Opinion of Counsel or Officers' Certificate to such effect.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors certified by the secretary or an assistant secretary of the Company authorizing the

execution of any such supplemental indenture, and upon the filing with the Trustee for such Series of Securities of evidence of the consent of the Holders as aforesaid and other documents, if any, required by Section 7.01, the Trustee for such Series of Securities shall join with the Company in the execution of such supplemental indenture. If such supplemental indenture affects such Trustee's own rights, duties or immunities under this Indenture or otherwise, such Trustee in its discretion may, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 8.02 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 8.02, the Company shall give notice in the manner and to the extent provided in Section 13.04 to the Holders of Securities of each Series affected thereby at their addresses as they shall appear on the Security register, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to mail such notice, or any defect therein, shall not in any way impair or affect the validity of any such supplemental indenture.

SECTION 8.03. *Effect of Supplemental Indenture.* Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Securities of each 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 8.04. *Documents to Be Given to Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall be provided with an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture as conclusive evidence that any supplemental indenture executed pursuant to this Article 8 complies with the applicable provisions of this Indenture.

SECTION 8.05. *Notation on Securities in Respect of Supplemental Indentures.* Securities of any Series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 8 may bear, upon the direction of the Company, a notation in form satisfactory to the Trustee for the Securities of such Series as to any matter provided for by such supplemental indenture. If the Company shall so determine, new Securities of any 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 Outstanding Securities of such Series.

ARTICLE 9
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

SECTION 9.01. *Company May Consolidate, Etc. on Certain Terms.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company may consolidate with or amalgamate or merge with or into, or sell, convey or lease all or substantially all of its assets to, any other company; provided that in any such case:

(a) either the Company shall be the continuing company, or the successor company shall be organized and existing under the laws of the United States, any state thereof, a member state of the European Union or any political subdivision thereof and shall expressly assume the due and punctual payment of the principal of and interest on all the Securities, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company; and

(b) such continuing or successor company, as the case may be, shall not be in material default immediately after such amalgamation, merger, consolidation, sale, conveyance or lease in the performance or observance of any such covenant or condition.

SECTION 9.02. *Successor Corporation Substituted.* In case of any such amalgamation, merger, consolidation, sale, lease or conveyance, and following such an assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein. Such successor corporation may cause to be signed, and may issue either in its own name or in the name of the Company prior to such succession, any or all of the Securities issuable hereunder that shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this Indenture, the Trustee shall authenticate and shall make available for delivery any Securities that shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

In the event of any such sale or conveyance the Company (or any successor corporation which shall theretofore have become such in the manner described in this Article 9) shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

The provisions of this Section 9.02 shall apply except as otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 9.03. *Opinion of Counsel to Trustee.* The Trustee, subject to the provisions of Sections 6.01 and 6.02, shall receive an Opinion of Counsel, prepared in accordance with Section 13.06, as conclusive evidence that any such consolidation, amalgamation, merger, sale, lease or conveyance, and any such assumption complies with the applicable provisions of this Indenture.

ARTICLE 10
SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE;
UNCLAIMED FUNDS

SECTION 10.01. *Satisfaction and Discharge of Indenture; Defeasance.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series:

(a) When (i) all Outstanding Securities of a Series (other than Securities of such Series replaced or paid pursuant to Section 2.08) have been canceled or delivered to the Trustee for cancellation or (ii) all Outstanding Securities of such Series have become due and payable, whether at maturity or as a result of the mailing of a notice of redemption in connection with a redemption of a Series of Securities, or will become due and payable within one year, and the Company irrevocably deposits with the Trustee funds in an amount sufficient to purchase U.S. Government Obligations, the principal of and interest on which will be sufficient, or a combination thereof sufficient, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (which opinion shall only be required to be delivered if U.S. Government Obligations have been so deposited), to pay the principal of and interest on the outstanding Securities when due at maturity or upon redemption of, including interest thereon to maturity or such redemption date (other than Securities of such Series replaced or paid pursuant to Section 2.08), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 10.01(c), cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 10.01(c) and 10.02, the Company at any time may terminate (i) all of its obligations under the Securities of such Series and this Indenture ("**legal defeasance option**") or (ii) its obligations under Article 3 of this Indenture and Section 4.03 ("**covenant defeasance option**"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option for such Series.

If the Company exercises its legal defeasance option with respect to Securities of a Series, payment of the Securities of such Series may not be accelerated because of an Event of Default.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.08, 2.10 and 6.07, and in this Article 10 shall survive until the Securities of such Series have been paid in full. Thereafter, the Company's obligations in Sections 6.07 and 10.05 and the Trustee's obligations under Section 10.04 shall survive such satisfaction and discharge.

SECTION 10.02 *Conditions to Defeasance.* Unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, the Company may exercise its legal defeasance option or its covenant defeasance option only if:

(a) the Company irrevocably deposits in trust with the Trustee money in an amount sufficient or U.S. Government Obligations, the principal of and interest on which will be sufficient, or a combination thereof sufficient, to pay the principal of, and premium (if any) and interest on the Securities of such Series when due at maturity or redemption, as the case may be, including interest thereon to maturity or such redemption date;

(b) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) 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 such Series will not recognize income, gain or loss for Federal Income Tax purposes as a result of such deposit and 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 deposit and defeasance had not occurred; and

(c) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Series will not recognize income, gain or loss for Federal Income Tax purposes as a result of such deposit and 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 deposit and defeasance had not occurred.

SECTION 10.03 *Application of Trust Funds.* The Trustee shall hold in trust funds or U.S. Government Obligations deposited with it pursuant to this Article 10. It shall apply the deposited funds and the proceeds from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities of such Series.

SECTION 10.04 *Repayment to Company.* The Trustee and the Paying Agent shall promptly turn over to the

Company upon request any funds or U.S. Government Obligations held by it as provided in this Article 10 which, in the written opinion of nationally recognized firm of independent public accountants delivered to the Trustee (which opinion shall only be required to be delivered if U.S. Government Obligations have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 10.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any funds held by them for the payment of principal or interest or that remains unclaimed for two years, and, thereafter, Holders entitled to the funds must look to the Company for payment as general creditors, and the Trustee and the Paying Agent shall have no further liability with respect to such funds.

SECTION 10.05 *Indemnity for Government Obligations.* The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 10.06 *Reinstatement.* If the Trustee or Paying Agent is unable to apply any funds or U.S. Government Obligations in accordance with this Article 10 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities of such Series shall be revived and reinstated as though no deposit had occurred pursuant to this Article 10 until such time as the Trustee or Paying Agent is permitted to apply all such funds or U.S. Government Obligations in accordance with this Article 10; provided, however, that, if the Company has made any payment of principal of or interest on, any Securities of such Series because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds or U.S. Government Obligations held by the Trustee or Paying Agent.

This Section 10.06 shall not apply to any Series unless specified as contemplated by Section 2.03 for the Securities of such Series.

ARTICLE 11 REDEMPTION OF SECURITIES AND SINKING FUNDS

SECTION 11.01. *Applicability of Article.* The provisions of this Article 11 shall be applicable to the Securities of any Series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a Series except as otherwise specified as contemplated by Section 2.03 for Securities of such Series.

SECTION 11.02. *Notice of Redemption; Partial Redemptions.* Notice of redemption to the

Holders of Securities of any Series required to be redeemed or to be redeemed as a whole or in part at the option of the Company shall be given by giving notice of such redemption as provided in Section 13.04, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such Series. Failure to give notice by mail, or any defect in the notice to the Holder of any Security of a Series designated for redemption as a whole or in part, shall not affect the validity of the proceedings for the redemption of any other Security of such Series.

The notice of redemption to each such Holder shall specify the date fixed for redemption, the CUSIP number or numbers for such Securities, the redemption price, the Place of Payment or Places of Payment, that payment will be made upon presentation and surrender of such Securities, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice, that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue and, if applicable, that a Holder of Securities who desires to convert Securities for redemption must satisfy the requirements for conversion contained in such Securities, the then existing conversion price or rate and the date and time when the option to convert shall expire. If less than all of the Securities of any Series are to be redeemed, the notice of redemption shall specify the numbers of the Securities of such Series to be redeemed. In case any Security of a Series is to be redeemed in part, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such Series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any Series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. If such notice is to be given by the Trustee, the Company shall provide notice of such redemption to the Trustee at least 45 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee). If such notice is given by the Company, the Company shall provide a copy of such notice given to the Holders of such redemption to the Trustee at least three Business Days prior to the date such notice is given to such Holders, but in any event at least 15 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee).

Unless otherwise specified pursuant to Section 2.03, not later than 10:00 a.m. Eastern time (or such other time as may be satisfactory to the Trustee or Paying Agent) on the redemption date specified in the notice of redemption given as provided in this Section 11.02, the Company will have on deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 3.03) funds available on such date (or other forms of property, if permitted by the terms of the Securities of such Series) sufficient to redeem on the redemption date all the Securities of such Series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If less than all the Outstanding Securities of a Series are to be redeemed, the Company will deliver to the Trustee at least 45 days prior to the date fixed for redemption an Officers' Certificate stating the aggregate principal amount of Securities to be redeemed (unless a shorter notice shall be satisfactory to the Trustee).

If less than all the Securities of a Series are to be redeemed, the Trustee shall select Securities of such Series to be redeemed on a pro rata basis, by lot or by such other method as the Trustee shall deem to be fair and appropriate, and the Trustee shall promptly notify the Company in writing of the Securities of such Series selected for redemption and, in the case of any Securities of such Series selected for partial redemption, the principal amount thereof to be redeemed. However, if less than all the Securities of any Series with differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular securities to be redeemed and shall notify the Trustee in writing thereof at least 45 days prior to the relevant redemption date (unless a shorter notice shall be satisfactory to the Trustee). Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such Series or any multiple thereof. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any Series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

This Section 11.02 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 11.03. *Payment of Securities Called for Redemption.* If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue. Except as provided in Sections 6.01 and 10.04, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a Place of Payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption. If for any Securities the date fixed for redemption is a regular interest payment date, payment of interest becoming due on such date shall be payable to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of Section 2.07.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest borne by the Security.

Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

This Section 11.03 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 11.04. *Exclusion of Certain Securities from Eligibility for Selection for Redemption.* Except with respect to Securities in global form, Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 30 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

SECTION 11.05. *Repayment at the Option of the Holders.* Securities of any Series that are repayable at the option of the Holders before their stated maturity shall be repaid in accordance with the terms of the Securities of such Series.

The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their stated maturity, for purposes of Section 10.01, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a direction that such Securities be cancelled.

ARTICLE 12 CONVERSION OF SECURITIES

SECTION 12.01. *Applicability of Article.* Securities of any Series that are convertible into Common Shares at the option of the Holder of such Securities shall be convertible in accordance with their terms and, unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series, in accordance with this Article 12. Each reference in this Article 12 to “a Security” or “the Securities” refers to the Securities of the particular Series that is convertible into Common Shares. If more than one Series of Securities with conversion privileges are Outstanding at any time, the provisions of this Article 12 shall be applied separately to each such Series.

SECTION 12.02. *Right of Holders to Convert Securities into Common Shares.* Subject to the provisions of this Article 12, at the option of the Holder thereof, any Security of any Series that is convertible into Common Shares, or any portion of the principal amount thereof which is \$1,000 or any integral multiple of \$1,000, may be converted into duly authorized, validly issued, fully paid and nonassessable Common Shares at any time during the period specified in the Securities of such Series, at the conversion price or conversion rate for each \$1,000 principal amount of Securities then in effect upon (a) in the case of any Security held in global form, surrender of the Security or Securities to the Company, at the account specified by the Trustee, and compliance with the procedures of the Depository in effect at that

time and (b) in the case of certificated Securities, surrender of the Security or Securities to the Company, duly endorsed to the Company or in blank, at any time during usual business hours at the office or agency to be maintained by it in accordance with the provisions of Section 3.02, and in either case accompanied by a written notice of election to convert as provided in Section 12.03.

If the Holder requests that the Common Shares be registered in a name other than that of the Holder, such notice also shall be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and/or the Trustee, as applicable, duly executed by the Holder thereof or his attorney duly authorized in writing. All Securities surrendered for conversion shall, if surrendered to the Company or any conversion agent, be delivered to the Trustee for cancellation and cancelled by it, or shall, if surrendered to the Trustee, be cancelled by it, as provided in Section 2.11.

The initial conversion price or conversion rate in respect of a Series of Securities shall be as specified in the Securities of such Series. The conversion price or conversion rate will be subject to adjustment on the terms set forth in Section 12.05 or such other or different terms, if any, as may be specified by Section 2.03 for Securities of such Series. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of any portion of such Security.

SECTION 12.03. *Issuance of Common Shares on Conversions.* As promptly as practicable after the surrender of any Security or Securities for conversion into Common Shares, the Company shall issue to or upon the written order of the Holder of the Security or Securities so surrendered the number of duly authorized, validly issued, fully paid and nonassessable Common Shares into which such Security or Securities may be converted in accordance with the terms thereof and the provisions of this Article 12. Prior to issuance of such Common Shares, the Company shall require written notice at its said office or agency from the Holder of the Security or Securities so surrendered stating that the Holder irrevocably elects to convert such Security or Securities, or, if less than the entire principal amount thereof is to be converted, stating the portion thereof to be converted. Such notice shall also state the name or names (with address and social security or other taxpayer identification number) in which said common shares are to be issued. Such conversion shall be made at the time that such Security or Securities shall be surrendered for conversion and such notice shall be received by the Company or the Trustee and such conversion shall be at the conversion price in effect at such time. The rights of the Holder of such Security or Securities as a Holder shall cease at such time, and the Person or Persons entitled to receive the Common Shares upon conversion of such Security or Securities shall be treated for all purposes as having become either record holder or holders of such Common Shares at such time. In the case of any Security of any Series that is converted in part only, upon such conversion the Company shall execute and, upon the Company's request and at the Company's expense, the Trustee or an authenticating agent shall authenticate and deliver to the Holder thereof, as requested by such Holder, a new Security or Securities of such Series of authorized denominations in aggregate principal amount equal to the unconverted portion of such Security.

If the last day on which such Security may be converted is not a Business Day in a place where the conversion agent for that Security is located, such Security may be surrendered to that conversion agent on the next succeeding day that is a Business Day.

The Company shall not be required to issue certificates for Common Shares upon conversion while its shareholder list is closed for a meeting of shareholders or for the payment of dividends or for any other purpose, but Common Shares shall be issued as soon as the shareholder list shall again be opened.

SECTION 12.04. *No Payment or Adjustment for Interest or Dividends.* Unless otherwise specified as contemplated by Section 2.03 for Securities of such Series, Securities surrendered for conversion into Common Shares during the period from the close of business on any regular record date or special record date next preceding any interest payment date to the opening of business on such interest payment date (except Securities called for redemption on a redemption date within such period) when surrendered for conversion must be accompanied by payment (by wire transfer or certified or official bank check to the order of the Company payable in clearing house funds at the location where the Securities are surrendered) of an amount equal to the interest thereon which the Holder is entitled to receive on such interest payment date. Payment of interest shall be made, on such interest payment date or such other payment date (as set forth in Section 2.07), as the case may be, to the Holder of the Securities as of such regular record date or special record date, as applicable. Except where Securities surrendered for conversion must be accompanied by payment as described above, no interest on converted Securities will be payable by the Company on any interest payment date subsequent to the date of conversion. No other payment or adjustment for interest or dividends is to be made upon conversion. Notwithstanding the foregoing, upon conversion of any Original Issue Discount Security, the fixed number of Common Shares into which such Security is convertible delivered by the Company to the Holder thereof shall be applied, first, to the portion attributable to the accrued original issue discount relating to the period from the date of issuance to the date of conversion of such Security, and, second, to the portion attributable to the balance of the principal amount of such Security.

SECTION 12.05. *Adjustment of Conversion Price.* Unless otherwise specified as contemplated by Section 2.03 for Securities of such Series, the conversion price for Securities convertible into Common Shares shall be adjusted from time to time as follows:

(a) If the Company shall (x) pay a dividend or make a distribution on Common Shares in Common Shares, (y) subdivide the issued and outstanding Common Shares into a greater number of shares or (z) consolidate the issued and outstanding Common Shares into a smaller number of shares, the conversion price for the Securities of such Series shall be adjusted so that the Holder of any such Security thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such Holder would have owned or have been entitled to receive after the happening of any of the events described above had such Security been converted immediately prior to the record date in the case of a dividend or the effective date in the case of subdivision or consolidation. An adjustment made pursuant to this Section 12.05(a) shall become

effective immediately after the record date in the case of a dividend, except as provided in Section 12.05(h), and shall become effective immediately after the effective date in the case of a subdivision or consolidation.

(b) If the Company shall issue rights or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for or purchase Common Shares at a price per share less than the current market price per share of Common Shares (as defined for purposes of this Section 12.05(b) in Section 12.05(e)), at the record date for the determination of shareholders entitled to receive such rights or warrants, the conversion price in effect immediately prior thereto shall be adjusted so that the same shall equal the price determined by multiplying the conversion price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of Common Shares outstanding on such record date plus the number of Common Shares which the aggregate offering price of the total number of Common Shares so offered would purchase at such current market price, and the denominator of which shall be the number of Common Shares outstanding on such record date plus the number of additional Common Shares receivable upon exercise of such rights or warrants. Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately, except as provided in Section 12.05(h), after such record date. In determining whether any rights or warrants entitle the Holders of the Securities of such Series to subscribe for or purchase Common Shares at less than such current market price, and in determining the aggregate offering price of such Common Shares, there shall be taken into account any consideration received by the Company for such rights or warrants plus the exercise price thereof, the value of such consideration or exercise price, as the case may be, if other than cash, to be determined by the Board of Directors.

(c) If the Company shall distribute to all holders of Common Shares any shares of Capital Stock of the Company (other than Common Shares) or evidences of its indebtedness or assets (excluding cash dividends or distributions paid from retained earnings of the Company) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights or warrants referred to in Section 12.05(b)) (any of the foregoing being herein in this Section 12.05(c) called the “**Special Securities**”), the conversion price shall be adjusted as provided in the next sentence unless the Company elects to reserve such Special Securities for distribution to the Holders of Securities of such Series upon the conversion so that any such Holder converting such Securities will receive upon such conversion, in addition to the Common Shares to which such Holder is entitled, the amount and kind of Special Securities which such Holder would have received if such Holder had, immediately prior to the record date for the distribution of the Special Securities, converted Securities into Common Shares. The conversion price, as adjusted, shall equal the price determined by multiplying the conversion price in effect immediately prior to such record date by a fraction the numerator of which shall be the current market price per share (as defined for purposes of this Section 12.05(c) in Section 12.05(e)) of Common Shares on the record date mentioned above less the then fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) of the portion of the Special Securities so distributed applicable to one Common Share, and the denominator of which shall be the current

market price per Common Share. In the event the then fair market value (as so determined) of the portion of the Special Securities so distributed applicable to one Common Share is equal to or greater than the current market price per Common Share on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of Securities of such Series shall have the right to receive the amount and kind of Special Securities such holder would have received had he converted such Securities immediately prior to the record date for the distribution of the Special Securities. Such adjustment shall become effective immediately, except as provided in Section 12.05(h), after the record date for the determination of shareholders entitled to receive such distribution.

(d) If, pursuant to Section 12.05(b) or 12.05(c), the conversion price shall have been adjusted because the Company has declared a dividend, or made a distribution, on the issued and outstanding Common Shares in the form of any right or warrant to purchase securities of the Company, or the Company has issued any such right or warrant, then, upon the expiration of any such unexercised right or unexercised warrant, the conversion price shall forthwith be adjusted to equal the conversion price that would have applied had such right or warrant never been declared, distributed or issued.

(e) For the purpose of any computation under Section 12.05(b), the current market price per Common Share on any date shall be deemed to be the average of the reported last sales prices for the 30 consecutive Trading Days (as defined below) commencing 45 Trading Days before the date in question. For the purpose of any computation under Section 12.05(c), the current market price per Common Share on any date shall be deemed to be the average of the reported last sales prices for the ten consecutive Trading Days before the date in question. The reported last sales price for each day (whether for purposes of Section 12.05(b), 12.05(c) or 12.06) shall be the reported last sales price, regular way, or, in case no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if the Common Shares are not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the Nasdaq Global Market or the Nasdaq Global Select Market (collectively, the “**Nasdaq Market**”) or, if the Common Shares are not quoted on the Nasdaq Market, the average of the closing bid and asked prices on such day in the over-the-counter market as furnished by any New York Stock Exchange member firm regularly making a market in the Common Shares selected for such purpose by the Board of Directors or, if no such quotations are available, the fair market value of the Common Shares as determined by a New York Stock Exchange member firm regularly making a market in the Common Shares selected for such purpose by the Board of Directors. As used herein, the term “**Trading Day**” with respect to the Common Shares means (x) if the Common Shares are listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business, (y) if the Common Shares are quoted on the Nasdaq Market, a day on which trades may be made on the Nasdaq Market or (z) otherwise, any day other than a Saturday or Sunday or a day on which banking

institutions in the State of New York are authorized or obligated by law or executive order to close.

(f) No adjustment in the conversion price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price. Any adjustments that by reason of this Section 12.05(f) are not required to be made, however, shall be carried forward and taken into account in any subsequent adjustment. Any adjustment required to be made in accordance with the provisions of this Article 12 shall be made not later than such time as may be required in order to preserve the tax free nature of a distribution to the holders of Common Shares. All calculations under this Article 12 shall be made by the Company and shall be to the nearest cent or to the nearest one-one hundredth of a share, as the case may be, with one-half cent and one-two hundredth of a share, respectively, being rounded upward. The Company shall be entitled to make such reductions in the conversion price, in addition to those required by this Section 12.05, as it in its discretion shall determine to be advisable in order that any share dividend or bonus issue, subdivision of shares, distribution of rights or warrants to purchase shares or securities or distribution of other assets (other than cash dividends) made by the Company to its shareholders shall not be taxable.

(g) Whenever the conversion price is adjusted, the Company shall file with the Trustee, at the Corporate Trust Office of the Trustee, and with the office or agency maintained by the Company for the conversion of Securities of such Series pursuant to Section 3.02, an Officers' Certificate, setting forth the conversion price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment. Neither the Trustee nor any conversion agent shall be under any duty or responsibility with respect to any such certificate or any facts or computations set forth therein, except to exhibit said certificate from time to time to any Holder of a Security of such Series desiring to inspect the same. The Company shall promptly cause a notice setting forth the adjusted conversion price to be mailed to the Holders of Securities of such Series, as their names and addresses appear upon the Security register.

(h) In any case in which this Section 12.05 provides that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (y) issuing to the Holder of any Security of such Series converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (z) paying to such holder any amount in cash in lieu of any fractional Common Shares pursuant to Section 12.06.

SECTION 12.06. *No Fractional Shares to Be Issued.* No fractional Common Shares shall be issued upon any conversion of Securities. If more than one Security of any Series shall be surrendered for conversion at one time by the same Holder, the number of full Common Shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities of such Series (or specified portions thereof to the extent permitted

hereby) so surrendered. Instead of a fraction of a Common Share which would otherwise be issuable upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment (computed to the nearest cent, with one-half cent being rounded upward) in respect of such fraction of a share in an amount equal to the same fractional interest of the reported last sales price of the Common Shares on the Trading Day next preceding the day of conversion.

SECTION 12.07. *Notice to Holders of the Securities of a Series Prior to Taking Certain Types of Action.* With respect to the Securities of any Series, in case:

- (a) the Company shall authorize the issuance to all holders of Common Shares of rights or warrants to subscribe for or purchase shares or any other right;
- (b) the Company shall authorize the distribution to all holders of Common Shares of evidences of indebtedness or assets (except for cash dividends or distributions paid from retained earnings of the Company);
- (c) of any subdivision or consolidation of Common Shares or of any amalgamation, consolidation or merger to which the Company is a party and for which approval by the shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of Securities of such Series pursuant to Section 3.02, and shall cause to be mailed to the Holders of Securities of such Series at their last addresses as they shall appear on the Security register, at least ten days prior to the applicable record date hereinafter specified, a notice stating (i) the date as of which the holders of Common Shares to be entitled to receive any such rights, warrants or distribution are to be determined, or (ii) the date on which any such share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation, winding up or other action is expected to become effective, and the date as of which it is expected that holders of record of Common Shares shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation, winding up or other action. The failure to give the notice required by this Section 12.07 or any defect therein shall not affect the legality or validity of any distribution, right, warrant, share subdivision or consolidation, amalgamation, merger, sale, transfer, dissolution, liquidation, winding up or other action, or the vote upon any of the foregoing.

SECTION 12.08. *Covenant to Reserve Shares for Issuance on Conversion of Securities.* The Company at all times will reserve and keep available out of each class of its authorized Common Shares, free from preemptive rights, solely for the purpose of issue upon

conversion of Securities of any Series as herein provided, such number of Common Shares as shall then be issuable upon the conversion of all Outstanding Securities of such Series. All Common Shares which shall be so issuable, when issued or delivered, shall be duly and validly issued Common Shares into which Securities of such Series are convertible, and shall be fully paid and nonassessable, free of all liens and charges and not subject to preemptive rights.

SECTION 12.09. *Compliance with Governmental Requirements.* If any Common Shares required to be reserved for purposes of conversion of Securities hereunder require registration or listing with or approval of any governmental authority under any Federal or State law, pursuant to the Securities Act or the Securities Exchange Act or any national or regional securities exchange on which the Common Shares are listed at the time of delivery of any Common Shares, the Company will use its best efforts to cause such shares to be duly registered, listed or approved, as the case may be, before such shares may be issued upon conversion.

SECTION 12.10. *Payment of Taxes upon Certificates for Shares Issued upon Conversion.* The issuance of certificates for Common Shares upon the conversion of Securities shall be made without charge to the converting Holders for any tax (including documentary and stamp taxes) in respect of the issuance and delivery of such certificates, and such certificates shall be issued in the respective names of, or in such names as may be directed by, the Holders of the Securities converted. The Company, however, shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the Holder of the Security converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 12.11. *Trustee's Duties with Respect to Conversion Provisions.* The Trustee and any conversion agent shall have no duty to any Holder to determine whether any facts exist that may require any adjustment of the conversion rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, in making the same. Neither the Trustee nor any conversion agent shall be accountable with respect to the registration under securities laws, listing, validity or value (or the kind or amount) of any Common Shares, or of any other securities or property, that at any time may be issued or delivered upon the conversion of any Security, and neither the Trustee nor any conversion agent makes any representation with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to make any payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion. The Trustee and any conversion agent, subject to the provisions of Section 313 of the Trust Indenture Act, shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Article 12.

SECTION 12.12. *Trustee Under No Duty to Monitor Stock Price or Calculations.* In no event shall the Trustee or conversion agent be responsible for monitoring the price of the

Company's common stock, or performing any calculations under this Article 12, such activities being the responsibility of the Company.

SECTION 12.13. *Conversion Arrangement on Call for Redemption.* In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities called for redemption by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee or the Paying Agent in trust for the Holders of Securities, at or before 10:00 a.m. Eastern time on the redemption date, an amount not less than the redemption price, together with interest, if any, accrued to the redemption date of such Securities, in immediately available funds. Notwithstanding anything to the contrary contained in this Article 12, the obligation of the Company to pay the redemption price of such Securities, including all accrued interest, if any, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Securities not duly surrendered for conversion by the Holders thereof, at the option of the Company, may be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the last day on which such Securities called for redemption may be converted in accordance with this Indenture and the terms of such Securities, subject to payment to the Trustee or Paying Agent of the above-described amount. The Trustee or the Paying Agent shall hold and pay to the Holders whose Securities are selected for redemption any such amount paid to it in the same manner as it would pay funds deposited with it by the Company for the redemption of Securities. Without the Trustee's and the Paying Agent's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee and the Paying Agent as set forth in this Indenture. The Company agrees to indemnify the Trustee and the Paying Agent from, and hold them harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers, including the reasonable costs and expenses incurred by the Trustee and the Paying Agent in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of their powers, duties, responsibilities or obligations under this Indenture.

ARTICLE 13 MISCELLANEOUS PROVISIONS

SECTION 13.01. *Incorporators, Shareholders, Officers and Directors of Company Exempt from Individual Liability.* No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Security shall be had against any incorporator as such or against any past, present or future director, officer, employee, incorporator, agent or shareholder of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders thereof and as part of the consideration for the issue of the

Securities. This Section 13.01 shall apply unless otherwise specified as contemplated by Section 2.03 for the Securities of any Series.

SECTION 13.02. *Provisions of Indenture for the Sole Benefit of Parties and Holders.* Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any Person, firm or corporation, other than the parties hereto, any Paying Agent and their successors hereunder and the Holders of the Securities any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders.

SECTION 13.03. *Successors and Assigns of Company Bound by Indenture.* 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 13.04. *Notices and Demands on Company, Trustee and Holders.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders to or on the Company may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Trustee) to Eastman Kodak Company, 343 State Street, Rochester, NY 14650, Attention: General Counsel. Any notice, direction, request or demand by the Company or any Holder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the Corporate Trust Office.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed by first-class mail, postage prepaid to such Holders as their names and addresses appear in the Security register within the time prescribed. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Company and Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be reasonably acceptable to the Trustee shall be deemed to be a sufficient giving of such notice.

SECTION 13.05. *Electronic Transmission to the Trustee.* In addition to the foregoing, the Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance in good faith with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction received by the Trustee following action taken pursuant to prior instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting in good faith on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 13.06. *Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that the person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

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

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

SECTION 13.07. *Payments Due on Saturdays, Sundays and Holidays.* Unless otherwise specified in a Security, if the date of maturity of interest on or principal of the Securities of any Series or the date fixed for redemption, repurchase or repayment of any such Security shall not be a Business Day, payment of interest or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

SECTION 13.08. *Conflict of any Provision of Indenture with Trust Indenture Act.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required by the Trust Indenture Act, such required provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 13.09. *New York Law to Govern.* This Indenture and each Security will be governed by and construed in accordance with the laws of the State of New York.

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

SECTION 13.11. *Effect of Headings; Gender.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. The use of the masculine, feminine or neuter gender herein shall not limit in any way the applicability of any term or provision hereof.

SECTION 13.12. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 13.13. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.14. *Certain Tax Information.* In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time to which a foreign financial institution, or issuer, trustee, paying agent, holder or other institution that is subject (“Applicable Law”) in relation to the Indenture, the Company agrees (i) to provide to the Trustee, to the extent reasonably available to the Company, sufficient information about holders or other applicable parties and/or transactions (including any modification to the terms of such transactions) so the Trustee can determine whether it has tax related obligations under Applicable Law, (ii) that the Trustee shall be entitled to make any withholding or deduction from payments under the Indenture to the extent necessary to comply with Applicable Law for which the Trustee shall not have any liability, and (iii) to hold harmless the Trustee for any losses it may suffer due to the actions it takes to comply with such Applicable Law, in case of each of clauses (ii) and (iii), other than any liability or losses as may be attributable to the Trustee’s willful misconduct or negligence. The terms of this section shall survive the termination of this Indenture.

[the remainder of this page is intentionally left blank]

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

EASTMAN KODAK COMPANY

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:



Boston Connecticut Florida New Jersey New York Washington, DC

One Jefferson Road
Parsippany, NJ 07054-2891

August 9, 2016

Eastman Kodak Company
343 State Street
Rochester, New York 14650

Ladies and Gentlemen:

We have acted as counsel to Eastman Kodak Company, a New Jersey corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), relating to the Company's (i) shares of common stock, par value of \$0.01 per share (the "Common Stock"), to be offered and sold by the Company (the "New Common Stock"), (ii) 21,586,854 shares of Common Stock to be offered by selling shareholders named in the Registration Statement (the "Selling Shareholders' Common Stock"), (iii) shares of preferred stock, no par value per share (the "Preferred Stock"), and (iv) the other securities referenced in the Registration Statement. The New Common Stock and Preferred Stock may be offered and sold by the Company and the Selling Shareholders' Common Stock may be offered and sold by the selling shareholders named in the Registration Statement (collectively, the "Selling Shareholders"), each from time to time as set forth in the Registration Statement, any amendment thereto, the prospectus contained therein (the "Prospectus") and supplements to the Prospectus (the "Prospectus Supplements") pursuant to Rule 415 under the Act for an aggregate offering price not to exceed \$1,200,000,000.

In connection with this opinion letter, we have examined and relied without investigation as to matters of fact upon the Registration Statement and the exhibits thereto and such certificates, statements and results of inquiries of public officials and officers and representatives of the Company and originals or copies, certified or otherwise identified to our satisfaction, of such other documents, corporate records, certificates and instruments as we have deemed necessary or appropriate to enable us to render the opinions expressed herein. In all such examinations, we have assumed the genuineness of all signatures on all documents examined by us, the legal competence and capacity of natural persons, the authenticity of documents submitted to us as originals, and the conformity with authentic original documents of all documents submitted to us as copies or by facsimile or other means of electronic transmission, or which we obtained from the Commission's Electronic Data Gathering, Analysis and Retrieval system ("Edgar") or other sites maintained by a court or governmental authority or regulatory body and the authenticity of the originals of such latter documents. We have also assumed that the books and records of the Company are maintained in accordance with proper corporate procedures.

The opinions expressed herein are limited in all respects to the New Jersey Business Corporation Act, as amended, and no opinion is expressed with respect to the laws of any other jurisdiction or any effect which such laws may have on the opinions expressed herein. This opinion letter is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

Based on the foregoing, and subject to the assumptions, qualifications and limitations stated herein and the effectiveness of the Registration Statement under the Act, we are of the opinion that:

1. With respect to the New Common Stock, assuming (a) the taking by the Board of Directors of the Company (the "Board") of all necessary corporate action to authorize and approve the issuance of the New Common Stock, (b) that the total issued shares of New Common Stock will not exceed the number of authorized shares in the Company's Second Amended and Restated Certificate of Incorporation and (c) the due issuance and delivery of the New Common Stock, upon payment therefor in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board, the New Common Stock will be validly issued, fully paid and nonassessable.

2. With respect to the Preferred Stock, assuming (a) the taking by the Board of all necessary corporate action to authorize and approve the issuance of the Preferred Stock, (b) that the total issued shares of Preferred Stock will not exceed the number of authorized shares in the Company's Second Amended and Restated Certificate of Incorporation, (c) the due filing of the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, certificate of designation or other applicable document authorizing and establishing the terms of the Preferred Stock and (d) the due issuance and delivery of the Preferred Stock, upon payment therefor in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board, the Preferred Stock will be validly issued, fully paid and nonassessable.

3. With respect to 20,723,050 shares of the Selling Shareholders' Common Stock outstanding as of the date hereof, such shares of Selling Shareholders' Common Stock are duly authorized, validly issued, fully paid and nonassessable.

4. With respect to 863,804 shares of the Selling Shareholders' Common Stock underlying the 125% Warrants and the 135% Warrants (each as defined in that certain Warrant Agreement, dated as of September 3, 2013, by and between the Company and Computershare Inc., a Delaware corporation, and its wholly-owned subsidiary, Computershare Trust Company, N.A., a federally chartered, limited purpose trust company, collectively as warrant agent (the "Warrant Agreement")) issued to the Selling Shareholders, upon payment by the Selling Shareholders of the exercise price of the Common Stock underlying the 125% Warrants and the 135% Warrants pursuant to, and in accordance with the terms and conditions of, the Warrant Agreement, such shares of Selling Shareholders' Common Stock, assuming that a sufficient number of shares of Common Stock have been set aside from the Company's authorized shares of Common Stock for purposes of the exercise of the 125% Warrants and the 135% Warrants, will be duly authorized, validly issued, fully paid and nonassessable.

This opinion letter is to be used only in connection with the Registration Statement and (i) the issuance and sale of the New Common Stock and Preferred Stock by the Company as described herein and (ii) the offer and sale of the Selling Shareholders' Common Stock by the Selling Shareholders as described herein, and may not be used, quoted or relied upon for any other purpose without our prior written consent.

The foregoing opinions are limited in all respects to the laws of the State of New Jersey and the federal laws of the United States of America. We express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus. In giving our consent, we do not thereby concede that we come within the category of persons whose consent is required by the Act or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ DAY PITNEY LLP

DAY PITNEY LLP

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Client: 23116-00017

August 9, 2016

Eastman Kodak Company
343 State Street
Rochester, New York 14650Re: Eastman Kodak Company
Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Eastman Kodak Company, a New Jersey corporation (the "Company") in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Registration Statement on Form S-3 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration under the Securities Act and the proposed issuance and sale from time to time pursuant to Rule 415 under the Securities Act, together or separately and in one or more series (if applicable) of:

- (i) the Company's debt securities, which may either be senior debt securities ("Senior Debt Securities") or subordinated debt securities (the "Subordinated Debt Securities" and, collectively with the Senior Debt Securities, the "Debt Securities");
- (ii) shares of the Company's common stock, par value \$0.01 per share (the "Common Stock");
- (iii) shares of the Company's preferred stock, no par value (the "Preferred Stock");
- (iv) depositary shares each representing a fraction of a share of a particular series of Preferred Stock (the "Depositary Shares");
- (v) warrants for the purchase of Common Stock, Preferred Stock or Debt Securities (the "Warrants");
- (vi) contracts for the purchase or sale of Debt Securities, Preferred Stock or Common Stock or other securities, currencies or commodities (the "Purchase Contracts");
- (vii) guarantees by the Company of obligations of one or more other parties (the "Guarantees"); and

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August 9, 2016

Page 2

(viii) units of the Company comprising any combination of Common Stock, Preferred Stock, Depositary Shares, Warrants, Purchase Contracts, Guarantees or Debt Securities (the "Units").

The Debt Securities, Common Stock, Preferred Stock, Depositary Shares, Warrants, Purchase Contracts, Guarantees and Units are collectively referred to herein as the "Securities." The Senior Debt Securities are to be issued under an indenture to be entered into between the Company and a financial institution to be named at the time such indenture is executed (the "Trust Company"), as indenture trustee (the "Senior Base Indenture"). The Subordinated Debt Securities are to be issued under an indenture to be entered into between the Company and the Trust Company, as indenture trustee (the "Subordinated Base Indenture," and together with the Senior Base Indenture, the "Base Indentures").

In arriving at the opinions expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of forms of the Base Indentures, forms of the Debt Securities, and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to these opinions, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

We have assumed without independent investigation that:

(i) at the time any Securities are sold pursuant to the Registration Statement (the "Relevant Time"), the Registration Statement and any supplements and amendments thereto (including post-effective amendments) will be effective and will comply with all applicable laws;

(ii) at the Relevant Time, a prospectus supplement will have been prepared and filed with the Commission describing the Securities offered thereby and all related documentation and will comply with all applicable laws;

(iii) all Securities will be issued and sold in the manner stated in the Registration Statement and the applicable prospectus supplement;

(iv) at the Relevant Time, all corporate or other action required to be taken by the Company to duly authorize each proposed issuance of Securities and all related documentation, (including (i) the due reservation of any shares of Common Stock

August 9, 2016

Page 3

or Preferred Stock for issuance upon exercise, conversion or exchange of any Securities for Common Stock or Preferred Stock (a "Convertible Security") and (ii) the execution (in the case of certificated Securities), delivery and performance of the Securities and any related documentation referred to in paragraphs 1 through 6 below) shall have been duly completed and shall remain in full force and effect;

(v) in the case of Debt Securities, at the Relevant Time, the relevant trustee shall have been qualified under the Trust Indenture Act of 1939, as amended (the "TIA"), a Statement of Eligibility of the Trustee on Form T-1 shall have been properly filed with the Commission and the relevant Base Indenture shall have been duly executed and delivered by the Company and all other parties thereto and duly qualified under the TIA; and

(vi) at the Relevant Time, a definitive purchase, underwriting or similar agreement and any other necessary agreement with respect to any Securities offered or issued will have been duly authorized by all necessary corporate or other action of the Company and duly executed and delivered by the Company and the other parties thereto.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. With respect to any Debt Securities, when:

- a. the terms and conditions of such Debt Securities have been duly established by supplemental indenture or officers' certificate in accordance with the terms and conditions of the relevant Base Indenture,
- b. any such supplemental indenture has been duly executed and delivered by the Company and the relevant trustee (together with the relevant Base Indenture, the "Indenture"), and
- c. such Debt Securities have been executed (in the case of certificated Debt Securities), delivered and authenticated in accordance with the terms of the applicable Indenture and issued and sold for the consideration set forth in the applicable definitive purchase, underwriting or similar agreement,

such Debt Securities will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

2. With respect to Depositary Shares, when:

- a. a deposit agreement relating to such Depositary Shares ("Deposit Agreement") has been duly executed and delivered by the Company and the depositary appointed by the Company,

- b. the terms of the Depositary Shares have been established in accordance with the Deposit Agreement, and
- c. the depositary receipts representing the Depositary Shares have been duly executed and countersigned (in the case of certificated Depositary Shares), registered and delivered in accordance with the related Deposit Agreement and the applicable definitive purchase, underwriting or similar agreement for the consideration provided therein,

the depositary receipts evidencing the Depositary Shares will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

3. With respect to any Warrants, when:

- a. the warrant agreement relating to such Warrants (the "Warrant Agreement"), if any, has been duly executed and delivered by the Company and each other party thereto,
- b. the terms of the Warrants have been established in accordance with the Warrant Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement, and
- c. the Warrants have been duly executed (in the case of certificated Warrants) and delivered in accordance with the Warrant Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

such Warrants will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

4. With respect to any Purchase Contracts, when:

- a. the related purchase contract agreement ("Purchase Contract Agreement"), if any, has been duly executed by the Company and each other party thereto,
- b. the terms of the Purchase Contracts have been established in accordance with the Purchase Contract Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement,
- c. the terms of any collateral or security arrangements relating to such Purchase Contracts have been established and the agreements thereto have

been validly executed and delivered by each of the parties thereto and any collateral has been deposited with the collateral agent, if applicable, in accordance with such arrangements, and

- d. such Purchase Contracts have been executed (in the case of certificated Purchase Contracts) and delivered in accordance with the Purchase Contract Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

such Purchase Contracts will be legal, valid and binding obligations of the Company, enforceable in accordance with their terms.

5. With respect to any Guarantees, when:

- a. the guarantee agreement relating to the Guarantees (the "Guarantee Agreement"), if any, has been duly executed and delivered by the Company and each other party thereto,
- b. the terms of the Guarantees have been duly established in accordance with the Guarantee Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement, and
- c. the Guarantees have been executed (in the case of certificated Guarantees), delivered in accordance with the Guarantee Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

such Guarantees will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

6. With respect to any Units, when:

- a. the unit agreement relating to the Units (the "Unit Agreement"), if any, has been duly executed and delivered by the Company and each other party thereto,
- b. the terms of the Units have been duly established in accordance with the Unit Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement, and
- c. the Units have been duly executed (in the case of certificated Units) and delivered in accordance with the Unit Agreement, if any, and the applicable

definitive purchase, underwriting or similar agreement for the consideration provided for therein,
the Units will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

The opinions expressed above are subject to the following exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America. This opinion is limited to the effect of the current state of the laws of the State of New York and the United States of America and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

B. The opinions above with respect to the Indenture, the Debt Securities, the depositary receipts representing the Depositary Shares, the Deposit Agreement, the Warrants, the Warrant Agreement, the Purchase Contracts, any Purchase Contract Agreement, the Guarantees, any Guarantee Agreement, the Units and any Unit Agreement (collectively, the “Documents”) are each subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors’ generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

C. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws or of unknown future rights; (ii) any waiver (whether or not stated as such) under the Indenture or any other Document of, or any consent thereunder relating to, unknown future rights or the rights of any party thereto existing, or duties owing to it, as a matter of law; (iii) any waiver (whether or not stated as such) contained in the Indenture or any other Document of rights of any party, or duties owing to it, that is broadly or vaguely stated or does not describe the right or duty purportedly waived with reasonable specificity; (iv) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (v) any purported fraudulent transfer “savings” clause; (vi) any provision in any Document waiving the right to object to venue in any court; (vii) any agreement to submit to the jurisdiction of any Federal court; (viii) any waiver of the right to jury trial or (ix) any provision to the effect that every

August 9, 2016

Page 7

right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others.

D. To the extent relevant to our opinions in paragraphs 2, 3, 4 and 6 and not covered by our opinions in paragraph 1 and 5, we have assumed that any securities, currencies or commodities underlying, comprising or issuable upon exchange, conversion or exercise of any Depositary Shares, Warrants, Purchase Contracts or Units are validly issued, fully paid and non-assessable (in the case of an equity security) or a legal, valid and binding obligation of the issuer thereof, enforceable against such issuer in accordance with its terms.

You have informed us that you intend to issue Securities from time to time on a delayed or continuous basis, and we understand that prior to issuing any Securities pursuant to the Registration Statement (i) you will advise us in writing of the terms thereof, and (ii) you will afford us an opportunity to (x) review the operative documents pursuant to which such Securities are to be issued or sold (including the applicable offering documents), and (y) file such supplement or amendment to this opinion (if any) as we may reasonably consider necessary or appropriate.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ GIBSON, DUNN & CRUTCHER LLP

COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

(in millions)	Quarter	Years Ended		Four Months	Eight Months	Years Ended	
	Ended June 30, 2016	2015	2014	Ended December 31, 2013	Ended August 31, 2013	2012	2011
Earnings (loss) from continuing operations before income taxes	\$ 24	\$ 2	\$ (49)	\$ (55)	\$ 2,406	\$(1,610)	\$(757)
Adjustments:							
Interest expense	32	63	62	22	106	139	138
Interest component of rental expense(1)	5	10	13	5	12	20	25
Amortization of capitalized interest	—	—	—	—	—	2	2
Earnings available for fixed charges	<u>\$ 61</u>	<u>\$ 75</u>	<u>\$ 26</u>	<u>\$ (28)</u>	<u>\$ 2,524</u>	<u>\$(1,449)</u>	<u>\$(592)</u>
Fixed charges:							
Interest expense	32	63	62	22	106	139	138
Interest component of rental	5	10	13	5	12	20	25
Capitalized interest	—	2	3	—	—	1	1
Total fixed charges	<u>\$ 37</u>	<u>\$ 75</u>	<u>\$ 78</u>	<u>\$ 27</u>	<u>\$ 118</u>	<u>\$ 160</u>	<u>\$ 164</u>
Ratio of earnings to fixed charges	1.6	1.0	*	**	21.4	***	****

(1) Interest component of rental expense is estimated to equal 1/3 of such expense, which is considered a reasonable approximation of the interest factor

* Earnings for the year ended December 31, 2014 were inadequate to cover fixed charges. The coverage deficiency was \$52 million.

** Earnings for the four months ended December 31, 2013 were inadequate to cover fixed charges. The coverage deficiency was \$55 million.

*** Earnings for the year ended December 31, 2012 were inadequate to cover fixed charges. The coverage deficiency was \$1,609 million.

**** Earnings for the year ended December 31, 2011 were inadequate to cover fixed charges. The coverage deficiency was \$756 million.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 (Filed August 9, 2016) of our report dated March 15, 2016 except with respect to our opinion on the consolidated financial statements insofar as it relates to the discontinued operations and assets held for sale related to Kodak Prosper described in Note 27, which is as of August 9, 2016 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in Eastman Kodak Company's (Successor) Current Report on Form 8-K dated August 9, 2016. We also consent to the references to us under the headings "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Rochester, New York
August 9, 2016

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 (Filed August 9, 2016) of our report dated March 19, 2014 except with respect to our opinion on the consolidated financial statements insofar as it relates to the discontinued operations and assets held for sale related to Kodak Prosper described in Note 27, which is as of August 9, 2016 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in Eastman Kodak Company's (Predecessor) Current Report on Form 8-K dated August 9, 2016. We also consent to the references to us under the headings "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

Rochester, New York
August 9, 2016