

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON DECEMBER 2, 1994.

REGISTRATION NO. 33-56195

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1
TO

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

KIRBY CORPORATION
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of
incorporation or organization)

74-1884980
(I.R.S. Employer
Identification No.)

1775 ST. JAMES PLACE, SUITE 300, HOUSTON, TEXAS 77056
(713) 629-9370
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

GEORGE A. PETERKIN, JR.
PRESIDENT
KIRBY CORPORATION
1775 ST. JAMES PLACE, SUITE 300
HOUSTON, TEXAS 77056
(713) 629-9370
(Name, address, including zip code, and
telephone number, including area code, of agent for service)

Copies to:

HENRY GILCHRIST
JENKENS & GILCHRIST, A PROFESSIONAL CORPORATION
1445 ROSS AVENUE, SUITE 3200
DALLAS, TEXAS 75202-2799

THOMAS P. MASON
ANDREWS & KURTH L.L.P.
4200 TEXAS COMMERCE TOWER
HOUSTON, TEXAS 77002

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as possible after the Registration Statement becomes effective.

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. /X/

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION

STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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KIRBY CORPORATION

DEBT SECURITIES

Kirby Corporation (the "Company") may offer at any time, or from time to time, its debt securities consisting of debentures, notes and/or other unsecured evidences of indebtedness (the "Debt Securities") with an aggregate initial offering price not to exceed \$250,000,000. The Company will offer the Debt Securities to the public on terms determined by market conditions. The Debt Securities may be offered separately or together, in separate series, in amounts, at prices and on terms to be determined at the time of sale and to be set forth in supplements to this Prospectus. The Debt Securities may be sold for U.S. dollars or one or more foreign or composite currencies and the principal of, premium, if any, and interest, if any, on the Debt Securities may likewise be payable in U.S. dollars or one or more foreign or composite currencies.

The terms of the Debt Securities, including where applicable the specific designation, aggregate principal amount, denominations, maturity, rate (which may be fixed or variable) and time of payment of interest, if any, purchase price, any terms for mandatory redemption or redemption at the option of the Company or the holder, the initial public offering price, and the names of any underwriters or agents and any other terms in connection with the offering and sale of the Debt Securities in respect of which this Prospectus is being delivered, will be set forth in the accompanying Prospectus Supplement (the "Prospectus Supplement").

The Debt Securities may be offered through underwriters, agents or dealers, or directly to purchasers by the Company. If an underwriter, agent or dealer is involved in the offering of any Debt Securities, the underwriter's discount, agent's commission or dealer's purchase price will be described in an applicable Prospectus Supplement, and the net proceeds to the Company from such offering will be the public offering price of the offered Debt Securities less such discount in the case of an underwriter, the purchase price of the offered Debt Securities in the case of a dealer, and less, in each case, the other expenses of the Company associated with the issuance and distribution of such Debt Securities. See "Plan of Distribution."

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

This Prospectus may not be used to consummate sales of the Debt Securities unless accompanied by a Prospectus Supplement.

The Date of this Prospectus is December 2, 1994.

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AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities

Exchange Act of 1934, as amended (the "Exchange Act"), and, therefore, files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549; at its New York Regional Office, Seven World Trade Center, New York, New York 10048; and at its Chicago Regional Office, Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained at prescribed rates, by writing to the Public Reference Section of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Such material can also be inspected at the American Stock Exchange, 86 Trinity Place, New York, New York 10006, on which the Company's Common Stock is listed.

This Prospectus constitutes a part of a Registration Statement on Form S-3 (together with all amendments, supplements and exhibits thereto, the "Registration Statement") filed by the Company with the Commission under the Securities Act of 1933, as amended (the "Securities Act"). This Prospectus omits certain of the information set forth in the Registration Statement (in accordance with the rules and regulations of the Commission), and reference is hereby made to the Registration Statement and related exhibits for further information with respect to the Company and the Debt Securities.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents previously filed by the Company with the Commission are incorporated in and made a part of this Prospectus:

- (i) Quarterly Reports on Form 10-Q for the quarters ended March 31, 1994, June 30, 1994 and September 30, 1994; and
- (ii) Annual Report on Form 10-K for the year ended December 31, 1993.

All documents filed by the Company pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the termination of the offering made hereby shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of the Registration Statement and this Prospectus to the extent that a statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of the Registration Statement or this Prospectus.

The Company will provide without charge to each person to whom this Prospectus is delivered, including any beneficial owner of shares of Common Stock, on the written or oral request of such person, a copy of any or all of the documents incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Request for such copy or copies should be directed to G. Stephen Holcomb, Vice President, Kirby Corporation, P.O. Box 1745, Houston, Texas 77251-1745; telephone (713) 629-9370.

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THE COMPANY

GENERAL

Kirby Corporation ("Kirby" or the "Company") is primarily a marine transportation company engaged, through its subsidiaries, in the operation of vessels on the inland waterway system of the United States and in United States coastwise and foreign trade. Kirby is also engaged, through subsidiaries, in diesel repair and property and casualty insurance.

The Company's principal executive offices are located at 1775 St. James Place, Suite 300, Houston, Texas 77056-3453 and its telephone number is (713) 629-9370. The Company's mailing address is P.O. Box 1745, Houston, Texas 77251-1745.

MARINE TRANSPORTATION

The Company's marine transportation business is conducted through three divisions, organized around the markets they serve: the Inland Chemical Division, engaged in the inland transportation of industrial chemicals and agricultural chemicals by tank barges; the Inland Refined Products Division, engaged in the inland transportation of refined petroleum products by tank barges; and the Offshore Division, engaged in the offshore transportation of petroleum products by ocean-going tank barges and tankers and dry bulk, container and palletized cargo by ocean-going barges and break-bulk and container ships. The Company's marine transportation divisions are strictly providers of transportation services and do not assume ownership of any of the products they transport.

The Inland Chemical Division serves industrial chemical companies by delivering petrochemical feedstocks, processed chemicals, lube oils and agricultural chemicals to industry users. The Inland Refined Products Division serves Gulf Coast refineries by transporting gasoline, diesel fuel and jet fuel to waterfront terminals. Each division operates inland tank barges to destinations along the Gulf Intracoastal Waterway, the Houston Ship Channel, the Mississippi River and its tributaries and the Ohio River. As of November 30, 1994, the combined fleet of these divisions consisted of 499 tank barges, 113 towing vessels and seven harbor tugboats.

The Offshore Division transports petroleum products, dry bulk, container and palletized cargos, including agricultural commodities, to markets worldwide, with particular emphasis on ports in the Gulf of Mexico, along the Atlantic Seaboard, in the Caribbean Basin, South America, West Africa and Europe. As of November 30, 1994, offshore movements of primarily refined petroleum products were provided by ten tankers and two ocean-going tank barge and tug units. Dry bulk cargo movements were provided by six ocean-going barge and tug units and containers and palletized cargo movements were provided by three break-bulk and container ships and one ocean-going barge and tug unit.

DIESEL REPAIR

The Company's diesel repair business is engaged in the overhaul and repair of diesel engines and related parts sales in two distinct markets: the marine market, serving vessels powered by large diesel engines utilized in the various inland and offshore marine industries; and the locomotive market, serving the shortline and industrial railroad markets.

The marine market has five service facilities that serve the Gulf Coast, the East Coast, the Midwest, the West Coast and the Pacific Northwest markets. Customers in this market include the inland and offshore barge industries, offshore petroleum and well service industry, offshore commercial fishing industry and the United States Government.

The locomotive market is served through a facility in Nashville, Tennessee. As an exclusive distributor for the Electromotive Division of General Motors Corporation, the locomotive business provides replacement parts, service and support for locomotives serving shortline and industrial railroads within the continental United States.

PROPERTY AND CASUALTY INSURANCE

The Company's property and casualty insurance business is engaged in the writing of property and casualty insurance primarily through Universal Insurance Company ("Universal") in the Commonwealth of Puerto Rico. A full service property and casualty insurer, with emphasis on the property lines of business, Universal is ranked third among Puerto Rico insurance companies in terms of policyholders' surplus and admitted assets.

On September 25, 1992, Universal merged with Eastern America Insurance Company ("Eastern America"), a property and casualty insurance company in Puerto Rico, with Universal being the surviving entity. As of October 25, 1994, the Company owned approximately 58% of Universal's voting common stock with the

remaining approximately 42% owned by Eastern America Financial Group, Inc. ("Eastern America Group"), the former parent of Eastern America. The Company owns 100% of the non-voting common and preferred stocks of Universal. In accordance with a 1992 shareholder agreement among Universal, the Company and Eastern America Group, through options and redemption rights, Universal has the right to purchase the Company's interest in Universal over a period of up to 12 years, the result of which would be Eastern America Group becoming the sole owner of Universal's stock. Since December 1992, the Company has received \$15,000,000 from the redemption by Universal of its capital stock. In August 1994, Eastern America Group purchased additional voting common stock from Universal for a purchase price of \$7,000,000.

RECENT DEVELOPMENTS

On July, 1, 1994, the Company purchased a single hull U.S. flag tanker from Tosco Refining Company. After undergoing extensive capitalized restorations and modifications, the tanker was placed in service in September 1994 in the carriage of refined petroleum products in United States coastwise trade and will operate under a three-year charter. The tanker has a capacity of 266,000 barrels and a deadweight tonnage of 37,750 and is scheduled to be retired from service in accordance with the Oil Pollution Act of 1990 ("OPA") on January 1, 1999. The Company's established bank revolving credit agreement provided funding for the transaction.

On July 21, 1994, the Company purchased three U.S. flag tankers from OMI Corp. for \$23,750,000. The single hull tankers will transport refined petroleum products primarily between the United States Gulf Coast, Florida and the mid-Atlantic states. Currently, one of the tankers is operating under a six-month charter effective October 1994 and one is chartered effective November 1994 for a one year period. The remaining tanker operates in the spot market. Both of the charters have option periods. Each of the tankers has a total capacity of 266,000 barrels and a deadweight tonnage of 37,853. In accordance with the OPA, the three tankers will be retired from service on January 1, 2000. Funding for the transaction was provided through the Company's established bank revolving credit agreement.

On August 1, 1994, the Board of Directors authorized the Company to purchase up to 2,000,000 shares of its own common stock. Prior authorization for the repurchase of the Company common stock was superseded by this authorization. The Company is authorized to purchase the common stock on the American Stock Exchange and in privately negotiated transactions. When purchasing common stock, the Company is subject to price, trading volume and other market considerations. Shares repurchased may be used for reissuance upon the exercise of stock options, in future acquisitions for stock or for other appropriate corporate purposes. To date, the Company has not purchased any common stock under this authorization.

On August 24, 1994, the Company discontinued its direct, all-water containership service from central United States (Memphis) to Mexico and Central America. The service was provided by the Company's wholly owned subsidiary, Americas Marine Express, Inc. The service was met with aggressive pricing from its competitors and the prospects for future profitability did not warrant continuation of the service. Since inception in February 1994, the operation incurred operating losses and anticipated shut-down expenses of approximately \$2,350,000 (\$1,500,000 after taxes or \$.05 per share).

On November 16, 1994, the Company completed the purchase from The Dow Chemical Company ("Dow") of 65 inland tank barges, one river towboat and two shifting boats for approximately \$24 million in

cash. Also, the Company assumed from Dow the lease of an additional 31 inland tank barges and two towboats. In addition, the Company entered into a contract with Dow to provide for Dow's inland bulk liquid marine transportation requirements for a period of ten years. Dow is a major manufacturer of petrochemicals, industrial chemicals and related bulk liquid products and historically has used its own barges and outside towing resources to service its

inland marine transportation requirements. Dow produces its products at its Freeport, Texas manufacturing complex, other plants in Louisiana and at various other United States locations. A number of the Dow plants, as well as their suppliers and customers, rely extensively on water transportation for moving products between Dow's manufacturing facilities, for shipment to the ultimate users and to move certain raw materials purchased by Dow. Funding for the transaction was provided through the Company's established bank revolving credit agreement.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the ratio of the Company's consolidated earnings to fixed charges for all periods presented.

YEAR ENDED DECEMBER 31,					NINE MONTHS ENDED SEPTEMBER 30,	
1993	1992	1991	1990	1989	1994	1993
4.70x	2.80x	3.84x	3.86x	3.07x	4.34x	3.19x

For the purpose of computing the ratio of earnings to fixed charges, "earnings" consists of earnings before taxes on income. "Fixed charges" include interest expense on debt and one-third of the operating lease expenses, which is considered to be representative of the interest factor. A statement setting forth the computation of the ratio of earnings to fixed charges for each of the periods presented above is filed as an exhibit to the Registration Statement of which this Prospectus is a part.

USE OF PROCEEDS

The net proceeds from the sale of the Debt Securities offered hereby will be used for general corporate purposes, which may include without limitation, the repayment of indebtedness and funding future acquisitions and working capital requirements.

DESCRIPTION OF DEBT SECURITIES

The following description summarizes certain general terms and provisions of the Debt Securities. The particular terms of the Debt Securities, including the nature of any variations from the following general provisions, will be described in the Prospectus Supplement relating to such Debt Securities.

The Debt Securities may be issued in one or more series under an Indenture between the Company and Texas Commerce Bank National Association, as Trustee (the "Trustee"), dated on or about December 2, 1994 (the "Indenture"). The Indenture has been filed with the Commission as an exhibit to the Registration Statement of which this Prospectus constitutes a part and is incorporated by reference herein.

The following summary of certain provisions of the Indenture does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all provisions of the Indenture, including the definition therein of certain terms. All article and section references appearing herein are to articles and sections of the Indenture. Unless otherwise defined herein, all capitalized terms shall have the definitions set forth in the Indenture.

GENERAL

The Debt Securities to be issued under the Indenture will be unsecured

general obligations of the Company and will rank pari passu with all other unsecured and unsubordinated indebtedness of the Company from time to time outstanding. The Debt Securities are currently limited to \$250,000,000 aggregate initial

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offering price, or the equivalent thereof in one or more foreign or composite currencies. The Debt Securities will not be convertible into the common stock or any other securities of the Company.

The Debt Securities are obligations exclusively of the Company, which is a holding company. Since the operations of the Company are currently conducted principally through wholly-owned subsidiaries, the cash flow of the Company, and therefore its ability to service its debt, including the Debt Securities, is dependent in part upon the earnings of such subsidiaries and the distribution of those earnings to the Company or upon other payments of funds to the Company by such subsidiaries. The payment of dividends and the provision of certain loans and advances to the Company by such subsidiaries may be subject to certain statutory or contractual restrictions, including financial and other restrictive covenants contained in agreements relating to indebtedness of the Company or its subsidiaries.

In addition, the rights of the Company to participate in any distribution of assets of any subsidiary upon its liquidation or reorganization or otherwise (and thus the ability of Holders of the Debt Securities to benefit from such distribution) are subject to the prior claims of creditors of the subsidiary, except to the extent that the Company may itself be a creditor with recognized claims against that subsidiary, and to the prior claims of holders of preferred stock, if any, issued by the Company's subsidiaries. Claims on the Company's subsidiaries by creditors may include claims of holders of indebtedness and claims of creditors in the ordinary course of business, including claims for trade payables and claims for damages by tort claimants. As of September 30, 1994, the Company's total consolidated indebtedness was approximately \$146.3 million, of which approximately \$111.8 million consisted of indebtedness of the Company's subsidiaries. The amount of claims on the Company's subsidiaries by holders of indebtedness, other creditors and tort claimants may increase or decrease, and additional claims may be incurred in the future. The Indenture does not limit the ability of the Company's subsidiaries to incur indebtedness or issue preferred stock.

The loan agreement relating to the Company's revolving credit facility provides that, upon a default under such agreements, the Company will pledge to the lenders thereunder all of the Company's equity interest in, and all claims for payment with respect to intercompany indebtedness of, the principal subsidiaries of the Company. In the event of such a pledge, the rights of the Company to participate in any distribution of assets of any such subsidiary upon its liquidation or bankruptcy or otherwise (and thus the ability of Holders of Debt Securities to benefit from such distribution) would be subject to the prior claims of such lenders, except to the extent that the Company may itself be a creditor with other recognized claims against such subsidiary, if any, issued by such subsidiary.

The Prospectus Supplement will describe the following terms of the Debt Securities being offered: (1) the title of the Debt Securities; (2) any limit on the aggregate principal amount of the Debt Securities; (3) the date or dates on which the Debt Securities may be issued and the date or dates (or the method of determination thereof) on which the principal of (and premium, if any, on) the Debt Securities are or will be payable; (4) the rate or rates (which may be fixed or variable) at which the Debt Securities will bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest, if any, will accrue, and the basis on which interest shall be calculated if other than on the basis of a 360-day year of twelve 30-day months; (5) the date or dates on which such interest, if any, on the Debt Securities will be payable and the Regular Record Dates for any such Interest Payment Dates; and the extent to which, or the manner in which, any interest

payable on a global Debt Security ("Global Notes") on an Interest Payment Date will be paid if other than in the manner described under "Book-Entry System" below; (6) each office or agency where, subject to the terms of the Indenture as described below under "Payment and Paying Agents," the principal of, and premium, if any, and any interest on the Debt Securities will be payable and each office or agency where, subject to the terms of the Indenture as described below under "Denominations, Registration and Transfer," the Debt Securities may be presented for registration of transfer or exchange; (7) the period or periods within which, the price or prices at which and the terms and conditions upon which the Debt Securities may be redeemed at the option of the Company; (8) the obligation, if any, of the Company to redeem, to repay or purchase the Debt Securities at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which the Debt Securities will be redeemed, repaid or purchased pursuant to any such obligation; (9) whether the Debt Securities are to be issued with original issue discount within the meaning of Section 1273(a) of the Internal

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Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder; (10) whether the Debt Securities are to be issued in whole or in part in the form of one or more Global Notes and, if so, the identity of the depository, if any, for such Global Note or Notes; (11) if other than Dollars, the Foreign Currency or Currencies or Foreign Currency Units in which the principal of, and premium, if any, and any interest on the Debt Securities shall or may be paid and, if applicable, whether at the election of the Company and/or the Holder, and the conditions and manner of determining the exchange rate or rates; (12) any index used to determine the amount of payment of principal of and premium, if any, and any interest on the Debt Securities; (13) any addition to, or modification or deletion of, any Events of Default or covenants provided for with respect to the Debt Securities; and (14) any other detailed terms and provisions of the Debt Securities that are not inconsistent with the Indenture (Section 301). Any such Prospectus Supplement will also describe any special provisions for the payment of additional amounts with respect to the Debt Securities.

The Debt Securities may be issued as Discount Securities to be sold at a substantial discount below their principal amount. "Discount Securities" means any Debt Securities issued with original issue discount for purposes of the Code. Special United States income tax and other considerations applicable to Discount Securities will be described in the Prospectus Supplement relating thereto. Discount Securities may provide for the declaration or acceleration of the Maturity of an amount less than the principal amount thereof upon the occurrence of an Event of Default and the continuation thereof (Sections 101, 502).

The Indenture provides that the Debt Securities may be issued in one or more series thereunder, in each case as authorized from time to time by the Board of Directors of the Company. The Indenture also provides that there may be more than one Trustee under the Indenture, each with respect to one or more different series of Debt Securities. At a time when two or more Trustees are acting, each with respect to only certain series, the term "Debt Securities" as used herein shall mean the one or more series with respect to which each respective Trustee is acting. In the event there is more than one Trustee under the Indenture, the powers and trust obligations of each Trustee as described herein shall extend only to the one or more series of Debt Securities for which it is Trustee. If more than one Trustee is acting under the Indenture, then the Debt Securities (whether of one or more than one series) for which each Trustee is acting shall in effect be treated as if issued under separate indentures.

The Indenture does not contain any provisions that would limit the ability of the Company to incur indebtedness. Reference is made to the Prospectus Supplement related to the series of Debt Securities offered thereby for information with respect to any deletions from, modifications of or additions to the Events of Default or covenants of the Company applicable to such Debt Securities that are described herein.

Under the Indenture, the Company will have the ability, in addition to the ability to issue Debt Securities with terms different from those of Debt Securities previously issued, without the consent of the Holders, to reopen a

previous issue of a series of Debt Securities and issue additional Debt Securities of such series, in an aggregate principal amount determined by the Company.

The Company will initially appoint Texas Commerce Bank National Association to serve as Trustee under the Indenture and Chemical Bank as Paying Agent and Security Registrar. Texas Commerce Bank National Association, in its capacity as Trustee, will be responsible for, among other things, transmitting to the Company any notices or other communications from Holders and transmitting to the Holders notice of the occurrence of any Event of Default (as defined below) as soon as practicable after obtaining knowledge thereof. Chemical Bank, in its capacity as Paying Agent and Security Registrar, will be responsible for, among other things, maintaining a record of the registration of ownership, exchange and transfer of the Debt Securities and accepting Debt Securities for exchange and transfer and ensuring that payments of the principal and premium, if any, and interest received from the Company in respect of the Debt Securities are duly paid to the registered Holders thereof.

DENOMINATIONS, REGISTRATION AND TRANSFER

The Debt Securities of a series may be issuable in whole or in part in the form of one or more Global Notes, as described below under "Book-Entry System." Unless otherwise provided in an applicable Prospectus Supplement with respect to a series of Debt Securities, the Debt Securities will be issuable in fully registered

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form and in denominations of \$1,000 or any multiple thereof. One or more Global Notes will be issued in a denomination or aggregate denominations equal to the aggregate principal amount of Outstanding Debt Securities of the series to be represented by such Global Note or Notes (Sections 201, 301, 302, 304).

The Debt Securities of any series (other than a Global Note) will be exchangeable for other Debt Securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations. The Debt Securities may be presented for exchange as provided above, and Debt Securities (other than a Global Note) may be presented for registration of transfer (with the form of transfer endorsed thereon duly executed), at the office of the Security Registrar or co-Security Registrar designated by the Company for such purpose with respect to any series of Debt Securities and referred to in an applicable Prospectus Supplement, without service charge and upon payment of any taxes and other governmental charges as described in the Indenture. Such transfer or exchange will be effected upon the Security Registrar or co-Security Registrar being satisfied with the documents of title and identity of the person making the request.

PAYMENT AND PAYING AGENTS

Unless otherwise indicated in an applicable Prospectus Supplement, payment of principal of, and premium, if any, and any interest on the Debt Securities will be made at the office of such Paying Agent or Paying Agents as the Company may designate from time to time. Payment of any interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) in certain circumstances described in the applicable Prospectus Supplement, by wire transfer to an account maintained by the Person entitled thereto (Section 307). Payment of any installment of interest on the Debt Securities will be made to the Person in whose name such Debt Security is registered at the close of business on the Regular Record Date for such interest (Section 307).

Unless otherwise indicated in an applicable Prospectus Supplement, Chemical Bank will act as the Company's sole Paying Agent through its office in the Borough of Manhattan, The City of New York, with respect to the Debt Securities. Any Paying Agents outside the United States and other Paying Agents in the United States initially designated by the Company for the Debt Securities being

offered will be named in the accompanying Prospectus Supplement. The Company may at any time designate additional Paying Agents or rescind the designation of any Paying Agent or approve a change in the office through which any Paying Agent acts.

All moneys paid by the Company to the Trustee or a Paying Agent for the payment of principal of, and premium, if any, and any interest on any Debt Securities that remain unclaimed at the end of two years after such principal, premium or interest shall have become due and payable will, upon request of the Company as provided in the Indenture, be repaid to the Company, and the Holder of such Debt Security may thereafter look only to the Company for payment thereof (Section 1103).

BOOK-ENTRY SYSTEM

The Debt Securities of a series may be issued in whole or in part in the form of one or more Global Notes that will be deposited with or on behalf of a depository located in the United States (a "Depository") identified in the Prospectus Supplement relating to such series.

The specific terms of the depository arrangement with respect to any Debt Securities of a series will be described in the Prospectus Supplement relating to such series. The Company anticipates that the following provisions will apply to all depository arrangements.

Unless otherwise specified in an applicable Prospectus Supplement, Debt Securities that are to be represented by a Global Note to be deposited with or on behalf of a Depository will be represented by a Global Note registered in the name of such Depository or its nominee. Upon the issuance of a Global Note in registered form, the Depository for such Global Note will credit on its book-entry registration and transfer system the respective principal amounts of the Debt Securities represented by such Global Note to the accounts of institutions that have accounts with such Depository or its nominee ("participants"). The

accounts to be credited shall be designated by the underwriters or agents of such Debt Securities or by the Company, if such Debt Securities are offered and sold directly by the Company. Ownership of beneficial interests in such Global Notes will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests by participants in such Global Notes will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by the Depository or its nominee for such Global Note. Ownership of beneficial interests in Global Notes by persons that hold through participants will be shown on, and the transfer of that ownership interest within such participant will be effected only through, records maintained by such participant. The laws of some jurisdictions require that certain purchasers of securities take physical delivery and such securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a Global Note.

So long as the Depository for a Global Note, or its nominee, is the registered owner of such Global Note, the Depository or its nominee, as the case may be, will be the sole Holder of the Global Notes represented thereby for all purposes under the Indenture. Except as otherwise provided in this section, the beneficial owners of such Global Notes will not be entitled to receive physical delivery of Certificated Notes and will not be considered the Holders thereof for any purpose under the Indenture, and no Global Notes shall be exchangeable or transferrable by the owners of beneficial interests. Accordingly, each person owning a beneficial interest in a Global Note must rely on the procedures of the Depository and, if such person is not a participant, on the procedures of the participant through which such person owns its interest in order to exercise any rights of a Holder under the Indenture.

Payment of principal of, premium, if any, and any interest on Debt Securities registered in the name of or held by a Depository or its nominee will be made to the Depository or its nominee, as the case may be, as the registered

owner or the holder of the Global Note representing such Debt Securities. None of the Company, the Trustee, any Paying Agent or the Security Registrar for such Debt Securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Note for such Debt Securities or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company expects that the Depository for Debt Securities of a series, upon receipt of any payment of principal, premium or interest in respect of a permanent Global Note, will credit immediately participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Note as shown on the records of such Depository. The Company also expects that payments will be governed by standing instructions and customary practices, as is now the case with the securities held for the accounts of customers registered in "street name," and will be the responsibility of such participants and not the Company.

A Global Note may not be transferred except as a whole by the Depository for such Global Note to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor of such Depository or a nominee of such successor (Section 304). If a Depository for Debt Securities of a series is at any time unwilling or unable to continue as Depository or ceases to be a clearing agency registered under the Exchange Act and a successor Depository is not appointed by the Company within 90 days after the Company receives notice from the Depository or otherwise becomes aware of such condition or if there shall have occurred and be continuing an Event of Default under the Indenture with respect to the series of Debt Securities, the Company will issue Debt Securities in definitive registered form in exchange for the Global Note or Notes representing such Debt Securities. In addition, the Company may at any time and in its sole discretion determine not to have any Debt Securities represented by one or more Global Notes and, in such event, will issue Debt Securities in definitive registered form in exchange for all the Global Notes representing such Debt Securities. In any such instance, an owner of a beneficial interest in a Global Note will be entitled to physical delivery in definitive form of Debt Securities of the series represented by such Global Note equal in principal amount to such beneficial interest and to have such Debt Securities registered in its name.

COVENANTS

The Indenture requires the Company to maintain its corporate existence and maintain an office or agency where Debt Securities may be presented or surrendered for payment, transfer or exchange.

The Indenture does not contain any financial performance covenants. Consequently, the Company is not required under the Indenture to meet any financial tests such as those that measure the Company's working capital, interest coverage, fixed charge coverage, amount of indebtedness or net worth in order to maintain compliance with the terms of the Indenture.

EVENTS OF DEFAULT

The following are Events of Default under the Indenture with respect to the Debt Securities: (a) failure to pay principal of or any premium on any Debt Security of that series when due; (b) failure to pay any interest on any Debt Security of that series when due, continued for 30 days; (c) failure to perform any other covenant of the Company in the Indenture (other than a covenant included in the Indenture solely for the benefit of a series of Debt Securities other than the series), continued for 60 days after written notice as provided in the Indenture; (d) certain events in bankruptcy, insolvency or reorganization; (e) failure to pay indebtedness for borrowed money of the Company or any Significant Subsidiary aggregating in excess of \$5,000,000,

continued for 30 days; and (f) any other Event of Default provided with respect to Debt Securities of that series (Section 501). If any Event of Default, other than bankruptcy, insolvency and reorganization Events of Default, with respect to Debt Securities of any series at any time Outstanding occurs and is continuing, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Outstanding Debt Securities of that series may declare the principal amount (or, if the Debt Securities of that series are Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Debt Securities of that series to be due and payable immediately. If any bankruptcy, insolvency or reorganization Event of Default provided with respect to Debt Securities of any series at any time Outstanding occurs and is continuing, the principal amount (or, if such the Debt Securities of that series are Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Debt Securities of that series shall be immediately due and payable without any declaration, notice or act of the Trustee or any Holder. At any time after a declaration of acceleration with respect to Debt Securities of any series has been made, but before a judgment or decree based on acceleration has been obtained, the Holders of a majority in aggregate principal amount of Outstanding Debt Securities of that series may, under certain circumstances, rescind and annul such acceleration (Section 502).

The Indenture provides that, subject to the duty of the Trustee during default to act with the required standard of care, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders, unless such Holders shall have offered to the Trustee reasonable indemnity (Section 603). Subject to such provisions for the indemnification of the Trustee and certain time limits which may be imposed by the Company pursuant to the terms of the Indenture, the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Debt Securities of that series (Sections 512, 701).

The Company is required to furnish the Trustee annually with a statement as to the performance by the Company of certain of its obligations under the Indenture and as to any default in such performance (Section 1105).

MODIFICATION AND WAIVER

Modifications of and amendments to the Indenture may be made by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Debt Securities of each series affected by such modification or amendment; provided, however, that no such modification or amendment may without the consent of the Holder of each Outstanding Debt Security affected thereby, (a) change the Stated Maturity of the principal of, or any installment of interest, if any, on,

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any Debt Security, (b) reduce the principal amount of, or any premium or interest on, any Debt Security, (c) reduce the amount of principal of Discount Debt Securities payable upon acceleration of the maturity thereof, (d) change the currency payment of principal of, or any premium or interest on, any Debt Security, (e) adversely affect the right of repayment or repurchase, if any, at the option of the Holder, (f) impair the right to institute suit for the enforcement of any payment on or with respect to any Debt Security, (g) certain modifications to Sections 513, 1002 and 1105 of the Indenture, or (h) reduce the percentage in principal amount of Outstanding Debt Securities of any series, the consent of whose Holders is required for modification or amendment of the Indenture or for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults (Section 1002).

The Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of each series may, on behalf of all Holders of Debt Securities

of that series, waive any past default under the Indenture with respect to Debt Securities of that series, except (i) a default in the payment of principal or any premium or interest or (ii) a covenant or provision that cannot be modified or amended without the consent of the Holders of each Outstanding Debt Security affected thereby (Section 513).

CONSOLIDATION, MERGER, SALE OR LEASE OF ASSETS

The Company shall not, without the consent of the Holders of the Outstanding Debt Securities under the Indenture, consolidate with or merge into, or transfer or lease its assets substantially as an entirety to any Person unless (i) the successor Person is a corporation organized under the laws of any domestic jurisdiction, (ii) the successor corporation assumes the Company's obligations on the Debt Securities and under the Indenture, (iii) immediately after giving effect to the transactions no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, and (iv) certain other conditions are met (Section 901).

DEFEASANCE

If so specified in the Prospectus Supplement with respect to Debt Securities of any series, the Company will be discharged from any and all obligations in respect of the Debt Securities of such series (except for certain obligations to register the transfer or exchange of Debt Securities of such series, replace stolen, lost or mutilated Debt Securities of such series, maintain paying agencies and hold moneys for payment in trust) if the Company deposits with the Trustee, in trust, money or U.S. Government Obligations (as defined in the indenture) which through the payment of interest thereon and principal thereof in accordance with their terms will provide money in an amount sufficient to pay all the principal, premium, if any, and interest on the Debt Securities of such series on the dates such payments are due in accordance with the terms of such Debt Securities. To exercise any such option, the Company is required, among other things, to deliver to the Trustee an opinion of counsel to the effect that (1) the deposit, related defeasance and, if applicable, discharge would not cause the Holders of the Debt Securities of such series to recognize income, gain or loss for United States income tax purposes and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit, defeasance and, if applicable, discharge had not occurred and (2) if the Debt Securities of such series are then listed on any national securities exchange, such Debt Securities would not be delisted from such exchange as a result of the exercise of such option (Article Thirteen).

NOTICES

Notices to Holders will be given by mail to the addresses of such Holders as they appear in the Security Register (Section 105).

GOVERNING LAW

The Indenture and the Debt Securities will be governed by, and construed in accordance with, the laws of the State of New York (Section 111).

CONCERNING THE TRUSTEE

The Trustee has normal banking relationships with the Company.

PLAN OF DISTRIBUTION

GENERAL

The Company may sell Debt Securities to or through underwriters or a group of underwriters, directly to other purchasers, or through dealers or agents. The distribution of the Debt Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing

market prices or at negotiated prices. Each Prospectus Supplement will describe the method of distribution, and time and place of delivery, of the offered Debt Securities. The Company also may, from time to time, authorize dealers, acting as the Company's agents, to solicit offers to purchase the offered Debt Securities upon the terms and conditions set forth in any Prospectus Supplement.

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

Under agreements that may be entered into by the Company, underwriters, dealers and agents that participate in the distribution of Debt Securities may be entitled to indemnification by the Company against certain liabilities, including liabilities under the Securities Act.

Each issuance of a series of Debt Securities will constitute a new issue of securities with no established trading market. In the event that Debt Securities of a series offered hereunder are not listed on a national securities exchange, certain broker-dealers may make a market in the Debt Securities, but will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given that any broker-dealer will make a market in the Debt Securities of any series or as to the liquidity of the trading market for such Debt Securities.

DELAYED DELIVERY ARRANGEMENT

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

LEGAL OPINIONS

Certain matters with respect to the validity of the Debt Securities offered hereby will be passed upon for the Company by Jenkins & Gilchrist, a Professional Corporation, Dallas, Texas, and for any underwriters, dealers or agents, as the case may be, by Andrews & Kurth L.L.P., Houston, Texas. Henry Gilchrist, the Secretary and an Advisory Director of the Company, is a shareholder of Jenkins & Gilchrist, a Professional Corporation. Jenkins & Gilchrist, a Professional Corporation will rely on Andrews & Kurth L.L.P. as to matters of New York law.

EXPERTS

The financial statements and schedules of the Company and consolidated subsidiaries as of December 31, 1992 and 1993 and for the years then ended, incorporated by reference in this Prospectus, have been incorporated by reference herein in reliance upon the reports of KPMG Peat Marwick LLP and Deloitte & Touche LLP, independent auditors, incorporated by reference herein, and upon the authority of said firms as experts in accounting and auditing. The reports of KPMG Peat Marwick LLP refer to changes in the methods of accounting for income taxes, postretirement benefits other than pensions, certain investments in debt and equity securities and accounting and reporting for

reinsurance of short-duration and long-duration contracts.

The financial statements and schedules of the Company and consolidated subsidiaries as of December 31, 1991 and for the year then ended, incorporated by reference in this Prospectus, have been incorporated by reference herein in reliance upon the report of Deloitte & Touche LLP, independent auditors, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

Expenses payable in connection with the distribution of the securities being registered (estimated except for the registration fee, substantially all of which will be borne by the Company, are as follows:

Registration fee.....	\$ 86,207
Printing and engraving expenses.....	25,000*
Legal fees and expenses.....	50,000*
Accounting fees and expenses.....	25,000*
Fees and expenses of Trustee.....	15,000*
Blue sky fees and expenses.....	10,000*
Rating Agency fees.....	135,000*
Miscellaneous expenses.....	13,793*
Total.....	\$360,000*

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* Estimated

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

(a) The Restated Articles of Incorporation of the Company provide for indemnification as follows:

"TWELFTH: 1. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

2. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually

and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification shall not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

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3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sections 1 and 2 of this Article Twelfth, or in defense of any claim, issue or matter therein, he must be indemnified by the corporation against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

4. Any indemnification under sections 1 and 2 of this Article Twelfth, unless ordered by a court or advanced pursuant to section 5 of this Article Twelfth, must be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made:

(a) By the stockholders;

(b) By the board of directors by majority vote of a quorum consisting of directors who were not parties to the act, suit or proceeding;

(c) If a majority vote of a quorum consisting of directors who were not parties to the act, suit or proceeding so orders, by independent legal counsel in a written opinion; or

(d) If a quorum consisting of directors who were not parties to the act, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

5. The expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation. The provisions of this section 5 of this Article Twelfth do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

6. The indemnification and advancement of expenses provided by this Article Twelfth:

(a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under these articles of incorporation or any bylaws, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to section 2 of this Article Twelfth or for the advancement of expenses of any director or officer, if a final adjudication establishes that his acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(b) Continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.

7. The corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee or agent, or arising out of his status as such, whether or not the corporation has the authority to indemnify him against such liability and expenses.

8. The other financial arrangements made by the corporation pursuant to section 7 of this Article Twelfth may include the following:

- (a) The creation of a trust fund.
- (b) The establishment of a program of self-insurance.
- (c) The securing of its obligation of indemnification by granting a security interest or other lien on any assets of the corporation.
- (d) The establishment of a letter of credit, guaranty or surety.

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No financial arrangement made pursuant to this section may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud or a knowing violation of law, except with respect to the advancement of expenses or indemnification ordered by a court.

9. Any insurance or other financial arrangement made on behalf of a person pursuant to this Article Twelfth may be provided by the corporation or any other person approved by the board of directors, even if all or part of the other person's stock or other securities is owned by the corporation.

10. In the absence of fraud:

(a) The decision of the board of directors as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this Article Twelfth and the choice of the person to provide the insurance or other financial arrangement shall be conclusive; and

(b) The insurance or other financial arrangement:

- (1) Is not void or voidable; and
- (2) Does not subject any director approving it to personal liability for his action, even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement."

(b) The Company has entered into agreements with each Director, certain key employees, including Brian K. Harrington and G. Stephen Holcomb, and certain directors of subsidiaries of the Company, that provide for the indemnification of such individuals for certain liabilities incurred in such capacity.

See "Undertakings" (Item 17), for an understanding by the Company relating to claims for indemnification, pursuant to these provisions, in connection with the securities being registered.

ITEM 16. EXHIBITS

- 4.1 -- Restated Articles of Incorporation of the Company, as amended (incorporated by reference to Exhibit 3.1 of the Registrant's 1989 Registration Statement on Form S-3 (Reg. No. 33-30832)).
- 4.2 -- Certificate of Amendment of Restated Articles of Incorporation of the Company filed with the Secretary of state of Nevada April 30, 1990 (incorporated by reference to Exhibit 3.2 of Registrant's Annual

- Report on Form 10-K for the year ended December 31, 1991).
- 4.3 -- Form of Indenture between the Company and Texas Commerce Bank National Association, as Trustee (included in this Part II).
 - 5.1 -- Opinion of Jenkens & Gilchrist, a Professional Corporation, counsel for the Company, as to the validity of the Debt Securities (included in this Part II).
 - 12.1 -- Statement regarding computation of ratio of earnings to fixed charges (previously filed).
 - 23.1 -- Consent of Jenkens & Gilchrist, a Professional Corporation (included in the Opinion in Exhibit 5.1).
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 - 24.1 -- Power of Attorney of certain officers and directors (included in this Part II).
 - 25.1 -- Statement of Eligibility of Trustee on Form T-1 (previously filed).

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ITEM 17. UNDERTAKINGS.

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 Act and is, therefore, unenforceable. In the event a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

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

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

The undersigned Registrant hereby undertakes 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 that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THE REGISTRANT CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING ON FORM S-3 AND HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF HOUSTON, STATE OF TEXAS, ON DECEMBER 1, 1994.

KIRBY CORPORATION

By: /s/ GEORGE A. PETERKIN, JR.
George A. Peterkin, Jr.
President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints George A. Peterkin, Jr. and Brian K. Harrington, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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 DATES INDICATED.

SIGNATURE	CAPACITY	DATE
/s/ ROBERT G. STONE, JR. (Robert G. Stone, Jr.)	Chairman of the Board and Director of the Company	December 1, 1994
/s/ GEORGE A. PETERKIN, JR. (George A. Peterkin, Jr.)	President and Director of the Company (Principal Executive Officer)	December 1, 1994
/s/ J. H. PYNE (J. H. Pyne)	Executive Vice President and Director of the Company	December 1, 1994
/s/ BRIAN K. HARRINGTON (Brian K. Harrington)	Senior Vice President, Treasurer, Assistant Secretary of the Company (Principal Financial Officer)	December 1, 1994
/s/ G. STEPHEN HOLCOMB (G. Stephen Holcomb)	Vice President, Controller, Assistant Treasurer, Assistant Secretary of the Company (Principal Accounting Officer)	December 1, 1994

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SIGNATURE	CAPACITY	DATE
/s/ GEORGE F. CLEMENTS, JR. (George F. Clements, Jr.)	Director of the Company	December 1, 1994
/s/ J. PETER KLEIFGEN (J. Peter Kleifgen)	Director of the Company	December 1, 1994
/s/ WILLIAM M. LAMONT, JR.	Director of the Company	December 1, 1994

(William M. Lamont, Jr.)

/s/ C. W. MURCHISON, III Director of the Company December 1, 1994
(C. W. Murchison, III)

/s/ J. VIRGIL WAGGONER Director of the Company December 1, 1994
(J. Virgil Waggoner)

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EXHIBIT INDEX

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KIRBY CORPORATION

TO

TEXAS COMMERCE BANK NATIONAL ASSOCIATION
TRUSTEE

INDENTURE

DATED AS OF DECEMBER 2, 1994

DEBT SECURITIES

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INDENTURE dated as of December 2, 1994, between KIRBY CORPORATION, a Nevada corporation (hereinafter called the "Company"), having its principal executive office at 1775 St. James Place, Suite 300, Houston, Texas 77056 and TEXAS COMMERCE BANK NATIONAL ASSOCIATION (hereinafter called the "Trustee"), having its Corporate Trust Office at 600 Travis Street, 8th Floor, Houston, Texas 77002.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes, bonds or other evidences of indebtedness (herein generally called the "Debt Securities"), to be issued in one or more series, as provided in this

Indenture.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of Debt Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Debt Securities or of Debt Securities of any series, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. DEFINITIONS.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

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

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

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

Certain terms, used principally in ARTICLE THREE or ARTICLE SIX, are defined in those respective Articles.

"Act" when used with respect to any Holder has the meaning specified in SECTION 701.

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

"Authenticating Agent" has the meaning specified in SECTION 611.

"Board of Directors" means either the board of directors of the Company, or the executive committee or any other committee of that board duly authorized to act in respect hereof.

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

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"Business Day" when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Debt Securities means any day that is not a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies in that Place of Payment or other location are authorized or obligated by law to close, except as otherwise specified pursuant to SECTION 301.

"Calculation Agent" means such Person as shall be determined by the Company from time to time.

"Code" means the Internal Revenue Code of 1986, as amended and as in effect on the date hereof.

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

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

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by the Chairman, a Vice Chairman, the President, the Chief Financial Officer, a Vice President, the Treasurer or an Assistant Treasurer, and by the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

"Component Currency" has the meaning specified in SECTION 310(H).

"Conversion Date" has the meaning specified in SECTION 310(D).

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"Conversion Event" means the cessation of (i) a Foreign Currency to be used both by the government of the country which issued such Currency and for the settlement of transactions by public institutions of or within the international banking community, (ii) the ECU to be used both within the European Monetary System and for the settlement of transactions by public institutions of or within the European communities, or (iii) any Currency unit other than the ECU to be used for the purposes for which it was established.

"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 instrument is located at 600 Travis Street, 8th Floor, Houston, Texas 77002.

"Corporation" includes corporations, associations, companies and business trusts.

"Currency" means Dollars or Foreign Currency.

"Debt Securities" has the meaning stated in the first recital of this Indenture and more particularly means any Debt Securities (including any Global Notes) authenticated and delivered under this Indenture.

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

"Depository" means a clearing agency registered under the Securities Exchange Act of 1934, as amended, or any successor thereto, which shall in either case be designated by the Company pursuant to SECTION 301 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean or include

each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Debt Securities of any series shall mean the Depositary with respect to the Debt Securities of that series.

"Discharged" has the meaning specified in SECTION 1302.

"Discount Security" means any Debt Security that is issued with "original issue discount" within the meaning of Section 1273(a) of the Code and the regulations thereunder.

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

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"Dollar Equivalent of the Currency Unit" has the meaning specified in SECTION 310(G).

"Dollar Equivalent of the Foreign Currency" has the meaning specified in SECTION 310(F).

"ECU" means the European Currency Unit as defined and revised from time to time by the Council of the European Communities.

"Election Date" has the meaning specified in SECTION 310(H).

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

"Exchange Rate Agent" means the New York Clearing House bank, if any, from time to time selected by the Company for purposes of SECTION 310; provided that such agent shall accept such appointment in writing and the terms of such appointment shall be acceptable to the Company and shall, in the opinion of the Company at the time of such appointment, require such agent to make the determinations required by this Indenture by a method consistent with the method provided in this Indenture for the making of such decision or determination.

"Exchange Rate Officer's Certificate" means a telex or a certificate setting forth (i) the applicable Market Exchange Rate and (ii) the Dollar, Foreign Currency or Currency unit amounts of principal, premium, if any, and any interest respectively (on an aggregate basis and on the basis of a Debt Security having the lowest denomination principal amount pursuant to SECTION 302 in the relevant Currency or Currency unit), payable on the basis of such Market Exchange Rate sent (in the case of a telex) or signed (in the case of a certificate) by the Chief Financial Officer, a Vice President, the Treasurer or any Assistant Treasurer of the Company.

"Fixed Rate Security" means a Debt Security that provides for the payment of interest at a fixed rate.

"Floating Rate Security" means a Debt Security that provides for the payment of interest at a variable rate determined periodically by reference to an interest rate index or any other index specified pursuant to SECTION 301.

"Foreign Currency" means a currency issued by the government of any country other than the United States or a composite currency or currency unit the value of which is determined by reference to the values of the currencies of any group of countries, including, but not limited to, the ECU.

"Global Note" means a Debt Security evidencing all or part of a series of Debt Securities that is executed by the Company and authenticated and delivered to the Depositary or pursuant to the Depositary's instructions, all in accordance with this Indenture and pursuant to a Company order, which shall be registered in the name of the Depositary or its nominee and that shall represent the amount of uncertificated securities as specified therein.

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"Holder" means a person in whose name a Debt Security of any series is registered in the Security Register.

"Indenture" means this instrument as originally executed, or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, unless the context otherwise requires, shall include the terms of a particular series of Debt Securities as established pursuant to SECTION 301.

"Independent" when used with respect to any specified Person means such a Person who (i) is in fact independent with respect to the Company, (ii) does not have any direct financial interest or any material indirect financial interest in the Company or in any other obligor upon the Debt Securities or in any Affiliate of the Company or of such other obligor, and (iii) is not connected with the Company or such other obligor or any Affiliate of the Company or of such other obligor, as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

The term "Interest", when used with respect to a Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

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

"Market Exchange Rate" means (i) for any conversion involving a Currency Unit on the one hand and Dollars or any Foreign Currency on the other, the exchange rate between the relevant Currency unit and Dollars or such Foreign Currency calculated by the method specified pursuant to SECTION 301 for the securities of the relevant series, (ii) for any conversion of Dollars into any Foreign Currency, the noon (New York City time) buying rate for such Foreign Currency for cable transfers quoted in New York City as certified for customs purposes by the Federal Reserve Bank of New York, and (iii) for any conversion of one Foreign currency into Dollars or another Foreign Currency, the spot rate at noon local time in the relevant market at which, in accordance with normal banking procedures, the Dollars or Foreign Currency into which conversion is being made could be purchased with the Foreign Currency from which conversion is being made from major banks located in New York City, London or any other principal market for Dollars or such purchased Foreign Currency. In the event of the unavailability of any of the exchange rates provided for in the foregoing clauses (i), (ii) and (iii) the Exchange Rate Agent shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York as of the most recent available date, or quotations from one or more major banks in New York City, London or any other principal market for such Currency or Currency unit in question, or such other quotations as the Exchange Rate Agent shall deem appropriate. Unless otherwise specified by the Exchange Rate Agent if there is more than one market for dealing in any currency or Currency unit by reason of foreign exchange regulations or otherwise, the market to be used in respect of such Currency or Currency unit shall be that upon which a nonresident issuer of securities designated in such Currency or Currency unit would purchase such Currency or Currency unit in order to make payments in respect of such securities.

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"Maturity" when used with respect to any Debt Security means the date on which the principal of such Debt Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, repayment at the option of the Holder thereof or otherwise as therein or herein provided.

"Mortgages" means mortgages, liens, pledges or other encumbrances.

"Officers' Certificate" means a certificate signed by the Chairman, a Vice Chairman, the President, the Chief Financial Officer, a Vice President, the Treasurer or an Assistant Treasurer, and the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel to the Company (including an employee of the Company) and who shall be reasonably satisfactory to the Trustee, which is delivered to the Trustee.

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

- (i) Debt Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Debt Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Debt Securities and any coupons thereto appertaining; provided, however, that if such Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and
- (iii) Debt Securities which have been surrendered pursuant to SECTION 306 or in exchange for or in lieu of which other Debt Securities have been authenticated and delivered pursuant to this Indenture, other than any such Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Debt Securities are held by a bona fide purchaser in whose hands such Debt Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Debt Securities outstanding have performed any Act hereunder, Debt Securities owned by the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such Act, only Debt Securities that the Trustee knows to be so owned shall be so disregarded. Debt 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 to act with respect to such Debt Securities and that the pledgee is not the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor. In determining whether the Holders of the requisite principal amount of Outstanding Debt Securities have performed any Act hereunder or whether a quorum is present at a meeting of Holders of Debt Securities, the principal amount of a Discount Security that shall be deemed to be Outstanding for such purpose shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to SECTION 502 and the principal amount of a Debt Security denominated in a Foreign Currency that shall be deemed to be Outstanding for such purpose shall be the amount calculated pursuant to SECTION 310(J).

"Overdue Rate," when used with respect to any series of the Debt Securities, means the rate designated as such in or pursuant to the Board Resolution or the supplemental indenture, as the case may be, relating to such series as contemplated by SECTION 301.

"Paying Agent" means any Person authorized by the Company to

pay the principal of (and premium, if any) or interest on any Debt Securities on behalf of the Company.

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

"Place of Payment" when used with respect to the Debt Securities of any series means the place or places where the principal of (and premium, if any) and interest on the Debt Securities of that series are payable as specified pursuant to SECTION 301.

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

"Redemption Date" means the date fixed for redemption of any Debt Security pursuant to this Indenture which, in the case of a Floating Rate Security, unless otherwise specified pursuant to SECTION 301, shall be an Interest Payment Date only.

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"Redemption Price" means, in the case of a Discount Security, the amount of the principal thereof that would be due and payable as of the Redemption Date upon a declaration of acceleration of the maturity thereof pursuant to SECTION 502, and in the case of any other Debt Security, the principal amount thereof, plus, in each case, premium, if any, and accrued and unpaid interest, if any, to the Redemption Date.

"Regular Record Date" for the interest payable on the Debt Securities of any series on any Interest Payment Date means the date specified for the purpose pursuant to SECTION 301 for such Interest Payment Date.

"Responsible Officer" when used with respect to the Trustee means any Vice President, the Secretary, any Assistant Secretary, any Trust Officer or Assistant Trust Officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" and "Security Registrar" have the respective meanings specified in SECTION 305(A).

"Significant Subsidiary" means any Subsidiary that would be a "significant subsidiary" under the definition therefor in Regulation Section 210.1-02 of Regulation S-X of the Rules and Regulations adopted pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, as in effect from time to time, or any successor statutes or regulations.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Paying Agent pursuant to SECTION 307.

"Specified Amount" has the meaning specified in SECTION 310(H).

"Stated Maturity" when used with respect to any Debt Security or any installment of principal thereof or premium thereon or interest thereon means the date specified in such Debt Security as the date on which the principal of such Debt Security or such installment of principal, premium or interest is due and payable.

"Subsidiary" means (i) any corporation of which at least a

majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation, irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency, is at the time, directly or indirectly, owned or controlled by the Company or by one or more Subsidiaries thereof, or by the Company and one or more Subsidiaries or (ii) any partnership or joint venture of which at least a majority of the equity ownership, whether in the form of membership, general, special or limited partnership interests or otherwise, is directly or indirectly owned or controlled by the Company or by one or more Subsidiaries thereof, or by the Company and one or more Subsidiaries.

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"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended and in force at the date as of which this instrument was executed, except as provided in SECTION 1005.

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

"U.S. Government Obligations" has the meaning specified in SECTION 1302.

"Valuation Date" has the meaning specified in SECTION 310(C).

"Vice President" includes with respect to the Company and the Trustee, any Vice President of the Company or the Trustee, as the case may be, whether or not designated by a number or word or words added before or after the title "Vice President."

SECTION 102. COMPLIANCE CERTIFICATES AND OPINIONS.

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

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

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(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is

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

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

SECTION 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

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

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

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

SECTION 104. NOTICES, ETC., TO TRUSTEE, PAYING AGENT AND COMPANY.

Any Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Vice President, Corporate Trust Department;

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(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid or airmail postage prepaid if sent from outside the United States, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument, to the attention of its Treasurer, or at any other address previously furnished in writing to the Trustee by the Company, or

(3) the Paying Agent by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing to or with the Paying Agent at the address for the Paying Agent provided pursuant to Section 301 or Section 305(c) or any supplemental Indenture.

Any such Act or other document shall be in the English language, except that any published notice may be in an official language of the country of publication.

SECTION 105. NOTICE TO HOLDERS; WAIVER.

Where this Indenture provides for notice to Holders of any

event, such notice shall be sufficiently given to Holders (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to such Holders as their names and addresses appear in the Security Register, within the time prescribed; provided, however, that any notice to Holders of Floating Rate Securities regarding the determination of a periodic rate of interest, if such notice is required pursuant to SECTION 301, shall be sufficiently given if given in the manner specified pursuant to SECTION 301.

In the event of suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice by mail, such notification shall be given by telex, telecopy or other facsimile transmission.

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 on 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.

SECTION 106. CONFLICT 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 by operation of Sections 310 to 317, inclusive, of the Trust Indenture Act (an "incorporated provision"), such incorporated provision shall control.

SECTION 107. EFFECT OF HEADINGS AND TABLE OF CONTENTS.

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

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SECTION 108. SUCCESSORS AND ASSIGNS.

All covenants and agreements in this Indenture by the parties hereto shall bind their respective successors and assigns and inure to the benefit of their permitted successors and assigns, whether so expressed or not.

SECTION 109. SEPARABILITY CLAUSE.

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

SECTION 110. BENEFITS OF INDENTURE.

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

SECTION 111. GOVERNING LAW.

This Indenture and the Debt Securities shall be deemed to be contracts made and to be performed entirely in the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of said State without regard to the conflicts of law rules of said State.

SECTION 112. LEGAL HOLIDAYS.

Unless otherwise specified pursuant to SECTION 301 or in any

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

SECTION 113. NO SECURITY INTEREST CREATED.

Nothing in this Indenture or in the Debt Securities, express or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar

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legislation, as now or hereafter enacted and in effect in any jurisdiction where property of the Company or its Subsidiaries is or may be located.

SECTION 114. LIABILITY SOLELY CORPORATE.

No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on any Debt Securities, or any part thereof, or of the indebtedness represented thereby, or upon any obligation, covenant or agreement of this Indenture, against any incorporator, or against any stockholder, officer or director, as such, past, present or future, of the Company (or any incorporator, stockholder, officer or director of any predecessor or successor corporation), either directly or through the Company (or any such predecessor or successor corporation), whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and all the Debt Securities are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any such incorporator, stockholder, officer or director, past, present or future, of the Company (or any incorporator, stockholder, officer or director of any such predecessor or successor corporation), either directly or indirectly through the Company or any such predecessor or successor corporation, because of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants, promises or agreements contained in this Indenture or in any of the Debt Securities or to be implied herefrom or therefrom; and that any such personal liability is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of this Indenture and the issue of securities; provided, however, that nothing herein or in the Debt Securities contained shall be taken to prevent recourse to and the enforcement of the liability, if any, of any stockholder or subscriber to capital stock upon or in respect of the shares of capital stock not fully paid.

SECTION 115. INTEREST LIMITATION.

It is the intention of the Company to conform strictly to all applicable usury laws and any subsequent revisions, repeals or judicial interpretations thereof. Accordingly, if the transactions contemplated hereby would be usurious under any applicable law then, in that event, notwithstanding anything to the contrary in the Debt Securities or this Indenture, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged, collected or received under a Debt Security or this Indenture or otherwise in connection with such Debt Security shall under no circumstances exceed the maximum amount allowed by applicable law, and any excess shall be credited to the principal amount of such Debt Security (or, if the principal amount of such Debt Security shall have been paid in full, refunded to the Company); and (b) in the event that the Maturity of any Debt Security is accelerated or in the event of any redemption or defeasance of such Debt Security, then such consideration that constitutes interest under applicable law may never include more than the maximum amount allowed by applicable law, and excess interest, if

any, provided for in this Indenture or such Debt Security or otherwise shall be cancelled automatically as of the date of such acceleration, redemption or defeasance and, if theretofore paid, shall be credited to the principal amount of such Debt Security (or, if the principal amount of such Debt Security

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shall have been paid in full, refunded by such Holder to the Company), to the extent permitted by applicable law. All calculations made to compute the rate of interest that is contracted for, taken, reserved, charged, collected or received under any Debt Security or under this Indenture or otherwise in connection with such Debt Security for the purpose of determining whether such rate exceeds the maximum amount allowed by applicable law shall be made, to the extent permitted by such applicable law, by amortizing, prorating, allocating and spreading during the period of the full stated term of such Debt Security all interest any time contracted for, taken, reserved, charged or received by such Holder or by the Trustee or the Paying Agent on behalf of any such Holder in connection therewith so that the amount or rate of interest charged for any and all periods of time during the term of the Debt Security is to the greatest extent possible less than the maximum amount or rate of interest allowed to be charged by law during the relevant period of time. Notwithstanding any of the foregoing, if at any time applicable laws shall be changed so as to permit a higher rate or amount of interest to be charged than that permitted prior to such change, then unless prohibited by law, references in this Indenture or any Debt Security to "applicable law" when used in the context of determining the maximum interest or rate of interest that can be charged shall be deemed to refer to such applicable law as so amended to allow the greater amount or rate of interest.

Neither the Trustee nor the Paying Agent shall have any responsibility to determine whether any payments with respect to the Debt Securities are in compliance with any applicable usury laws and subsequent revisions, repeals or judicial interpretations thereof. Notwithstanding any provision of this Indenture or the Debt Securities, the Trustee and any Paying Agent (other than the Company) may continue to make payments on the Debt Securities without regard to the application of this Section unless and until it shall have received from the Company, in conformity with Sections 102 and 103 of this Indenture, (i) an Opinion of Counsel to the effect that, as the result of a final judicial interpretation by a court of competent jurisdiction, any payments with respect to the Debt Securities will exceed the maximum amount allowed by applicable law and that any direction to the Trustee or the Paying Agent by the Company for action under this Section is in compliance with all applicable laws and the provisions of this Indenture and the Debt Securities and (ii) an Officers' Certificate setting forth the action required to be taken with respect to the Debt Securities pursuant to this Section, together with any computations or calculations with respect thereof, and stating that such action is in compliance with the provisions of this Indenture and the Debt Securities.

SECTION 116. 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.

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ARTICLE TWO

DEBT SECURITY FORMS

SECTION 201. FORMS GENERALLY.

The Debt Securities of each series shall be substantially in one of the forms (including global form) established in or pursuant to a Board Resolution or one or more indentures supplemental hereto, and shall have such

appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which any series of the Debt Securities may be listed, or to conform to usage, all as determined by the officers executing such Debt Securities as conclusively evidenced by their execution of such Debt Securities. If the form of a series of Debt Securities (or any Global Note) is established in or pursuant to a Board Resolution, a copy of such Board Resolution shall be delivered to the Trustee, together with an Officers' Certificate setting forth the form of such series, at or prior to the delivery of the Company Order contemplated by SECTION 303 for the authentication and delivery of such Debt Securities (or any such Global Note).

The definitive Debt Securities of each series shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Debt Securities, as conclusively evidenced by their execution of such Debt Securities.

SECTION 202. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

The form of the Trustee's certificate of authentication to be borne by the Debt Securities shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the series of Debt Securities issued under the within mentioned Indenture.

TEXAS COMMERCE BANK NATIONAL
ASSOCIATION, as Trustee

By _____
Authorized Signatory

ARTICLE THREE

THE DEBT SECURITIES

SECTION 301. AMOUNT UNLIMITED; ISSUABLE IN SERIES.

The aggregate principal amount of Debt Securities that may be authenticated and delivered under this Indenture is limited to \$250,000,000 (or, with respect to any series of Debt Securities issued in a Foreign Currency, its equivalent based upon the applicable Market Exchange Rate at the time of issuance).

The Debt Securities may be issued in one or more series. There shall be established in one or more indentures supplemental hereto or in or pursuant to a Board Resolution accompanied by an Officers' Certificate prior to the issuance of Debt Securities of any series:

(1) the title of the Debt Securities of the series (which shall distinguish the Debt Securities of such series from all other series of Debt Securities);

(2) the limit, if any, upon the aggregate principal amount of the Debt Securities of the series that may be authenticated and delivered under this Indenture (except for Debt Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of, other Debt Securities of such series pursuant to SECTIONS 304, 305, 306, 1006 or 1207 and except for any Debt Securities that,

pursuant to SECTION 303, are deemed never to have been authenticated and delivered hereunder);

(3) the date or dates on which or periods during which the Debt Securities of the series may be issued, and the date or dates (or the method of determination thereof) on which the principal of (and premium, if any, on) the Debt Securities of such series are or may be payable (which, if so provided in such Board Resolution or supplemental indenture may be determined by the Company from time to time and set forth in the Debt Securities of the series issued from time to time);

(4) the rate or rates (or the method of determination thereof) at which the Debt Securities of the series shall bear interest, if any, and the dates from which such interest shall accrue (which, in either case or both, if so provided in such Board Resolution or supplemental indenture may be determined by the Company from time to time and set forth in the Debt Securities of the series issued from time to time), the Interest Payment Dates on which such interest shall be payable (or the method of determination thereof), and the Regular Record Dates for the interest payable on such Interest Payment Dates and, in the case of Floating Rate Securities, the notice, if any, to Holders regarding the determination of interest and the manner of giving such notice, and the extent to which, or the manner in which, any interest payable on any Global Note on an Interest Payment Date will be paid if other than in the manner provided in SECTION 307;

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(5) the place or places where the principal of (and premium, if any) an interest on Debt Securities of the series shall be payable by the Company;

(6) the obligation, if any, of the Company to redeem or purchase Debt Securities of the series at the option of the Holder and the period or periods within which or the dates on which, the prices at which and the terms and conditions upon which Debt Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

(7) the period or periods within which or the date or dates on which, the price or prices at which and the terms and conditions upon which Debt Securities of the series may be redeemed, if any, in whole or in part, at the option of the Company or otherwise;

(8) if the coin or Currency in which the Debt Securities shall be issuable is in Dollars, the denominations of such Debt Securities if other than denominations of \$1,000 and any integral multiple thereof (except as provided in SECTION 304);

(9) whether the Debt Securities of the series are to be issued as Discount Securities and the amount of discount with which such Debt Securities may be issued and, if other than the principal amount thereof, the portion of the principal amount of Debt Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to SECTION 502;

(10) provisions, if any, for the defeasance of Debt Securities of the series;

(11) if other than Dollars, the Foreign Currency or Currencies in which Debt Securities of the series shall be denominated, or in which payment of the principal of (and/or premium, if any) and/or interest on the Debt Securities of the series may be made, and the particular provisions applicable thereto and, if applicable, the amount of Debt Securities of the series which entitles the Holder of a Debt Security of the series or proxy to one vote for purposes of SECTION 805;

(12) if the principal of (and premium, if any) or interest on Debt Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a Currency other than that in which the Debt Securities are denominated or payable without such election, in addition or in lieu of the provisions of SECTION 310, the period or periods within which and the terms and conditions upon which such election may be made and the time and the manner of determining the exchange rate or rates between the Currency or Currencies in which the Debt Securities are denominated or payable without such election and the Currency or Currencies in which the Debt Securities are to be paid if such election is made;

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(13) the date as of which any Global Note representing any Outstanding Debt Securities of the series shall be dated if other than the date of original issuance of the first Debt Security of the series to be issued;

(14) if the amount of payments of principal of (and premium, if any) or interest on the Debt Securities of the series may be determined with reference to an index including, but not limited to, an index based on a Currency or Currencies other than that in which the Debt Securities are denominated or payable, or any other type of index, the manner in which such amounts shall be determined;

(15) if the Debt Securities of the series are denominated or payable in a Foreign Currency, any other terms concerning the payment of principal of (and premium, if any) or any interest on such Debt Securities (including the Currency or Currencies of payment thereof);

(16) the designation of the Exchange Rate Agent with respect to the series;

(17) the applicable Overdue Rate, if any;

(18) the applicable dates for purposes of Section 312(a) of the Trust Indenture Act;

(19) any addition to, or modification or deletion of, any Events of Default or covenants provided for with respect to Debt Securities of the series;

(20) whether the Debt Securities of the series shall be issued in whole or in part in the form of one or more Global Notes and, in such case, the Depositary for such Global Note or Notes;

(21) the Person who shall be the Security Registrar or Paying Agent with respect to the Debt Securities of the series, and

(22) the designation of the Calculation Agent, if any, and the duties and responsibilities thereof; and

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

All Debt Securities of any one series shall be substantially identical except as to denomination, rate of interest, Stated Maturity and the date from which interest, if any, shall accrue, which, as set forth above, may be determined by the Company from time to time as to Debt Securities of a series. All Debt Securities of any one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional Debt Securities of such series.

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If any of the terms of a series of Debt Securities is established in or pursuant to a Board Resolution, a copy of such Board Resolution shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

SECTION 302. DENOMINATIONS.

In the absence of any specification pursuant to SECTION 301 with respect to Debt Securities of any series, the Debt Securities of such series shall be issuable only in registered form and in denominations of \$1,000 and any integral multiple thereof and shall be payable only in Dollars.

SECTION 303. EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Debt Securities of any series shall be executed on behalf of the Company by its Chairman, a Vice Chairman, its President, its Chief Financial Officer, one of its Vice Presidents or its Treasurer, under its corporate seal reproduced thereon or affixed thereto and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Debt Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debt Securities of any series, executed by the Company, to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Debt Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Debt Securities. If all the Debt Securities of any one series are not to be issued at one time and if a Board Resolution or supplemental indenture relating to such series shall so permit, such Company Order may set forth procedures acceptable to the Trustee and the Paying Agent for the issuance of such Debt Securities such as interest rate, Stated Maturity, date of issuance and date from which interest, if any, shall accrue.

In authenticating Debt Securities hereunder, the Trustee shall be entitled to receive, and (subject to any incorporated provisions) shall be fully protected in relying upon, prior to the authentication and delivery of the Debt Securities of a particular series, (i) the supplemental indenture or the Board Resolution by or pursuant to which the form and terms of such Debt Securities have been approved, (ii) an Officer's Certificate stating that no Event of Default shall have occurred and be continuing, and (iii) an Opinion of Counsel stating that:

(1) all instruments furnished by the Company to the Trustee in connection with the authentication and delivery of such Debt Securities conform to the requirements of

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this Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Debt Securities;

(2) the forms and terms of such Debt Securities have been established in conformity with the provisions of this Indenture;

(3) in the event that the forms or terms of such Debt Securities have been established in a supplemental indenture, the execution and delivery of such supplemental indenture has been duly authorized by all necessary corporate action of the Company, such supplemental indenture has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the

Trustee, is a valid and binding obligation enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law);

(4) the execution and delivery of such Debt Securities have been duly authorized by all necessary corporate action of the Company and such Debt Securities have been duly executed by the Company, and, assuming due authentication by the Trustee and delivery by the Company, are valid and binding obligations enforceable against the Company in accordance with their terms, entitled to the benefit of the Indenture, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and subject to such other exceptions as counsel shall request and as to which the Trustee shall not reasonably object; and

(5) the amount of Debt Securities Outstanding of such series, together with the amount of such Debt Securities, does not exceed any limit established under the terms of this Indenture on the amount of Debt Securities of such series that may be authenticated and delivered.

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

Each Debt Security shall be dated the date of its authentication.

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

(a) Pending the preparation of definitive Debt Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Debt Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination for Debt Securities of such series, substantially of the tenor of the definitive Debt Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Debt Securities may determine, as conclusively evidenced by their execution of such Debt Securities. Every such temporary Debt Security shall be executed by the Company and shall be authenticated and delivered by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Debt Securities in lieu of which they are issued.

If temporary Debt Securities of any series are issued, the Company will cause definitive Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Debt Securities of such series, the temporary Debt Securities of such series shall be exchangeable for definitive Debt Securities of such series, of a like Stated Maturity and with like terms and provisions, upon surrender of the temporary Debt Securities of such series at the office or agency of the Security Registrar without charge to the Holder, except as provided in SECTION 305 in

connection with a transfer. Upon surrender for cancellation of any one or more temporary Debt Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Debt Securities of the same series of authorized denominations and of a like Stated Maturity and like terms and provisions. Until so exchanged, the temporary Debt Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of such series.

(b) If the Company shall establish pursuant to SECTION 301 that the Debt Securities of a series are to be issued in whole or in part in the form of one or more Global Notes, then the Company shall execute and the Trustee shall, in accordance with SECTION 303 and the Company Order with respect to such series, authenticate and deliver one or more Global Notes in temporary or permanent form that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the outstanding Debt Securities of such series to be represented by one or more Global Notes, (ii) shall be registered by the Security Registrar in the name of the Depository for such Global Note or Notes or the nominee of such Depository, (iii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instruction, and

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(iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Debt Securities in definitive form, this Debt Security may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository."

Notwithstanding any other provision of this Section or SECTION 305, unless and until it is exchanged in whole or in part for Debt Securities in definitive form, a Global Note representing all or a portion of the Debt Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

If at any time the Depository for the Debt Securities of a series notifies the Company that it is unwilling or unable to continue as Depository for the Debt Securities of such series or if at any time the Depository for Debt Securities of a series ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to the Debt Securities of such series. If a successor Depository for the Debt Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Debt Securities of such series, will authenticate and deliver, Debt Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Note or Notes representing such series in exchange for such Global Note or Notes.

The Company may at any time and in its sole discretion determine that the Debt Securities of any series issued in the form of one or more Global Notes shall no longer be represented by such Global Note or Notes. In such event, or in the event of the occurrence and continuation of an Event of Default with respect to Debt Securities of a series, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Debt Securities of such series, will authenticate and deliver, Debt Securities of such series in definitive form and in an aggregate principal amount equal to the principal amount of the Global Note or Notes representing such series in exchange for such Global Note or Notes.

If specified by the Company pursuant to SECTION 301 with

respect to Debt Securities of a series, the Depositary for such series of Debt Securities may surrender a Global Note for such series of Debt Securities in exchange in whole or in part for Debt Securities of such series in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute and the Trustee shall authenticate and deliver, without charge:

(i) to each Person specified by the Depositary a new Debt Security or Securities of the same series of any authorized denomination as requested by such Person

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in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Note; and

(ii) to the Depositary a new Global Note in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Note and the aggregate principal amount of Debt Securities delivered to Holders thereof.

Upon the exchange of a Global Note for Debt Securities in definitive form, such Global Note shall be canceled by the Security Registrar. Debt Securities issued in exchange for a Global Note pursuant to this SECTION 304 shall be registered in such names and in such authorized denominations as the Depositary for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debt Securities to the persons in whose names such Debt Securities are so registered.

SECTION 305. REGISTRATION, TRANSFER AND EXCHANGE.

(a) The Company shall cause to be kept at the principal office of the Security Registrar a register (the registers maintained in such office and in any other office or agency of the Company, the Security Registrar or the Paying Agent being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Debt Securities and of transfers and exchanges of the Debt Securities. The Paying Agent is hereby appointed "Security Registrar" for the purpose of registering the Debt Securities and registering transfers and exchanges of the Debt Securities as herein provided.

Upon surrender for registration of transfer of any Debt Security of any series at the office or agency of the Company maintained for such purpose, the Company or the Security Registrar shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee, one or more new Debt Securities of the same series of like aggregate principal amount of such denominations as are authorized for Debt Securities of such series and of a like Stated Maturity and with like terms and conditions.

At the option of the Holder, Debt Securities of any series (except Global Notes) may be exchanged for other Debt Securities of the same series of like aggregate principal amount and of a like Stated Maturity and with like terms and conditions, upon surrender of the Debt Securities to be exchanged at such office or agency.

Whenever any Debt Securities (including any temporary Debt Securities or Global Notes) are surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Debt Securities to the Holders entitled to receive the same.

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

Every Debt Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Paying Agent) be duly

endorsed, or be accompanied by a written

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instrument of transfer in form satisfactory to the Company and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge will be made for any transfer or exchange of Debt Securities except as provided in SECTION 306. The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration, transfer or exchange of Debt Securities, other than those expressly provided in this Indenture to be made at the Company's own expense or without expense or without charge to the Holders.

Neither the Security Registrar nor the Company shall be required (i) to issue or register, the transfer or exchange of Debt Securities of any series during a period beginning at the opening of business 15 days before the day of the transmission of a notice of redemption of Debt Securities of such series selected for redemption under SECTION 1204 and ending at the close of business on the day of such transmission, or (ii) to register, transfer or exchange any Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Debt Security being redeemed in part.

(c) The Company shall enter into an appropriate agency agreement with any Person designated by the Company as Security Registrar or Paying Agent that is not a party to this Indenture, which agreement shall incorporate the provisions of the Trust Indenture Act and shall implement the provisions of this Indenture that relate to such Security Registrar or Paying Agent. Prior to the designation of any such Person, the Company shall, by written notice (which notice shall include the name and address of the principal office of such Person), inform the Trustee of such designation.

SECTION 306. MUTILATED, DESTROYED, LOST AND STOLEN DEBT SECURITIES.

If (i) any mutilated Debt Security is surrendered at the office or agency of the Company or the Security Registrar maintained for such purpose or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Debt Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them and any Paying Agent and any Security Registrar harmless, and none of the Company, the Trustee or the Security Registrar receives notice that such Debt Security has been acquired by a bona fide purchaser, then the Company shall execute and upon Company Request the Security Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Debt Security, a new Debt Security of the same series of like Stated Maturity and with like terms and conditions and like principal amount, bearing a number not contemporaneously Outstanding.

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

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

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

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

SECTION 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

(a) Interest on any Debt 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 such Debt Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest notwithstanding the cancellation of such Debt Security upon any transfer or exchange subsequent to the Regular Record Date. Payment of interest on Debt Securities shall be made at the offices of the Paying Agent or Paying Agents specified pursuant to SECTION 301, by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or, upon request of a Holder of \$10,000,000 (or the equivalent thereof with respect to the specified Currency applicable to Debt Securities denominated in a Foreign Currency) or more in aggregate principal amount of Debt Securities will be entitled to receive interest payments by wire transfer of immediately available funds if appropriate wire transfer instructions have been received in writing by the Paying Agent not less than 15 days prior to such Interest Payment Date. Such wire instructions, upon receipt by the Paying Agent, shall remain in effect until revoked by such Holder.

(b) Any interest on any Debt Security that is payable but is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of his having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names such Debt 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 and the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each such Debt Security and the date of the proposed payment, and at the same time the Company shall deposit with the Paying Agent an amount of money in the Currency or Currency unit in which the Debt Securities of such series are payable (except as otherwise specified pursuant to SECTIONS 301 or 310) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee and the Paying Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which date shall be not more than 15 days and not less than 10 days prior to the date of the Paying Agent proposed payment and not less than 10 days after the receipt by the Paying Agent of the notice of the proposed payment. The Paying Agent shall promptly notify the Company and the Trustee of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holders of such Debt Securities at their addresses as they appear in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid by the Paying Agent to

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the Persons in whose names such Debt Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

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

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

SECTION 308. CANCELLATION.

Unless otherwise specified pursuant to SECTION 301 for Debt Securities of any series, all Debt Securities surrendered for payment, redemption, transfer, or exchange, if surrendered to any Person other than the Security Registrar, shall be delivered to the Security Registrar. All Debt Securities so delivered shall be promptly canceled by the Security Registrar. The Company may at any time deliver to the Security Registrar for cancellation any Debt Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Debt Securities so delivered shall be promptly canceled by the Security Registrar. No Debt Securities shall be authenticated in lieu of or in exchange for any Debt Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Debt Securities held by the Security Registrar shall be destroyed by the Security Registrar or held by the Security Registrar in accordance with the Security Registrar's standard retention policy, and the Security Registrar shall deliver a certificate to such effect to the Company. The acquisition of any Debt Securities by the Company shall not operate as a redemption or satisfaction of the indebtedness represented thereby unless and until such Debt Securities are surrendered to the Security Registrar for cancellation.

SECTION 309. COMPUTATION OF INTEREST.

Except as otherwise specified pursuant to SECTION 301 for Debt Securities of any series, interest on the Debt Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 310. CURRENCY OF PAYMENTS IN RESPECT OF DEBT SECURITIES.

(a) With respect to Debt Securities of any series not permitting the election provided for in paragraph (b) below or the Holders of which have not made the election

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provided for in paragraph (b) below, except as provided in paragraph (d) below, payment of the principal of (and premium, if any) and any interest on any Debt Security of such series will be made in the Currency in which such Debt Security is payable.

(b) It may be provided pursuant to SECTION 301 with respect to the Debt Securities of any series that Holders shall have the option, subject to paragraphs (d) and (e) below, to receive payments of principal of (and premium, if any) and any interest on such Debt Securities in any of the Currencies that may be designated for such election by delivering to the Paying Agent and the Exchange Rate Agent a written election, to be in form and substance satisfactory to the Paying Agent, not later than the close of

business on the Election Date immediately preceding the applicable payment date. If a Holder so elects to receive such payments in any such Currency, such election will remain in effect for such Holder or any transferee of such Holder until changed by such Holder or such transferee by written notice to the Paying Agent and the Exchange Rate Agent (but any such change must be made not later than the close of business on the Election Date immediately preceding the next payment date to be effective for the payment to be made on such payment date and no such change or election may be made with respect to payments to be made on any Debt Security of such series with respect to which an Event of Default has occurred or notice of redemption has been given by the Company pursuant to ARTICLE TWELVE). Any Holder of any such Debt Security who shall not have delivered any such election to the Paying Agent and the Exchange Rate Agent by the close of business on the applicable Election Date will be paid the amount due on the applicable payment date in the relevant Currency as provided in paragraph (a) of this SECTION 310.

(c) If the election referred to in paragraph (b) above has been provided for pursuant to SECTION 301, then not later than the fourth Business Day after the Election Date for each payment date, the Paying Agent and the Exchange Rate Agent will deliver to the Company a written notice specifying, in the Currency in which each series of the Debt Securities are payable, the respective aggregate amounts of principal of (and premium, if any) and any interest on the Debt Securities to be paid on such payment date, specifying the amounts so payable in respect of the Debt Securities as to which the Holders of Debt Securities denominated in any Currency shall have elected to be paid in another Currency as provided in paragraph (b) above. If the election referred to in paragraph (b) above has been provided for pursuant to SECTION 301 and if at least one Holder has made such election, then, on the second Business Day preceding each payment date, the Company will deliver to the Paying Agent and the Exchange Rate Agent an Exchange Rate Officer's Certificate in respect of the Currency payments to be made on such payment date. The Currency amount receivable by Holders of Debt Securities who have elected payment in a Currency as provided in paragraph (b) above shall be determined by the Company on the basis of the applicable Market Exchange Rate in effect on the third Business Day (the "Valuation Date") immediately preceding each payment date.

(d) If a Conversion Event occurs with respect to a Foreign Currency, the ECU or any other Currency unit in which any of the Debt Securities are denominated or payable other than pursuant to an election provided for pursuant to paragraph (b) above, then with respect to each date for the payment of principal of (and premium, if any) and any interest on the applicable Foreign Currency, the ECU or such other Currency unit occurring after the last date

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on which such Foreign Currency, the ECU or such other Currency unit was used (the "Conversion Date"), the Dollar shall be the Currency of payment for use on each such payment date. The Dollar amount to be paid by the Company to the Paying Agent and by the Paying Agent to the Holders of such Debt Securities with respect to such payment date shall be the Dollar Equivalent of the Foreign Currency or, in the case of a Currency unit, the Dollar Equivalent of the Currency unit, in each case as determined by the Exchange Rate Agent in the manner provided in paragraph (f) or (g) below.

(e) If the Holder of a Debt Security denominated in any Currency shall have elected to be paid in another Currency as provided in paragraph (b) above, and a Conversion Event occurs with respect to such elected Currency, such Holder shall receive payment in the Currency in which payment would have been made in the absence of such election. If a Conversion Event occurs with respect to the Currency in which payment would have been made in the absence of such election, such Holder shall receive payment in Dollars as provided in paragraph (d) of this SECTION 310.

(f) The "Dollar Equivalent of the Foreign Currency" shall be determined by the Exchange Rate Agent and shall be obtained for each subsequent payment date by converting the specified Foreign Currency into Dollars at the Market Exchange Rate on the Conversion Date.

(g) The "Dollar Equivalent of the Currency Unit" shall be determined by the Exchange Rate Agent and subject to the provisions of paragraph (h) below, shall be the sum of each amount obtained by converting the Specified Amount of each Component Currency into Dollars at the Market Exchange Rate for such Component Currency on the Valuation Date with respect to each payment.

(h) For purposes of this SECTION 310 the following terms shall have the following meanings:

A "Component Currency" shall mean any Currency which, on the Conversion Date, was a component currency of the relevant Currency unit, including, but not limited to, the ECU.

A "Specified Amount" of a Component Currency shall mean the number of units of such Component Currency or fractions thereof which were represented in the relevant currency unit, including, but not limited to, the ECU, on the Conversion Date. If after the Conversion Date the official unit of any Component Currency is altered by way of combination or subdivision, the Specified Amount of such Component Currency shall be divided or multiplied in the same proportion. If after the Conversion Date two or more Component Currencies are consolidated into a single Currency, the respective Specified Amounts of such Component Currencies shall be replaced by an amount in such single Currency equal to the sum of the respective Specified Amounts of such consolidated Component Currencies expressed in such single Currency, and such amount shall thereafter be a Specified Amount and such single Currency shall thereafter be a Component Currency. If after the Conversion Date any

Component Currency shall be divided into two or more Currencies, the Specified Amount of such Component Currency shall be replaced by amounts of such two or more Currencies with appropriate Dollar equivalents at the Market Exchange Rate on the date of such replacement equal to the dollar equivalent of the Specified Amount of such former Component Currency at the Market Exchange Rate on such date, and such amounts shall thereafter be Specified Amounts and such Currencies shall thereafter be Component Currencies. If after the Conversion Date of the relevant Currency unit, including but not limited to, the ECU, a Conversion Event (other than any event referred to above in this definition of "Specified Amount") occurs with respect to any Component Currency of such Currency unit, the Specified Amount of such Component Currency shall, for purposes of calculating the Dollar Equivalent of the Currency unit, be converted into Dollars at the Market Exchange Rate in effect on the Conversion Date of such Component Currency.

"Election Date" shall mean the record date with respect to any Stated Maturities, and with respect to the Maturity shall mean the record date (if within 16 or fewer days prior to the Maturity) immediately preceding the Maturity, and with respect to any series of Debt Securities whose record date immediately preceding the Maturity is more than 16 days prior to the Maturity or any series of Debt Securities for which no record dates are provided with respect to the Stated Maturities or the Maturity shall mean the date that is 16 days prior to the Stated Maturity or the Maturity, as the case may be.

(i) All decisions and determinations of the Exchange Rate Agent regarding the Dollar Equivalent of the Foreign Currency, the Dollar Equivalent of the Currency Unit and the Market Exchange Rate shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company and all Holders of the Debt Securities denominated or payable in the relevant Currency. In the event of a Conversion Event with respect to a Foreign Currency, the Company, after learning thereof, will immediately give written notice thereof to the Trustee, the Paying Agent and the Exchange Rate Agent (and the Trustee will promptly thereafter give notice in the manner provided in SECTION 105 to the Holders of the relevant Debt Securities) specifying the Conversion Date. In the event of a Conversion Event with respect to the ECU or any other Currency unit in which Securities are denominated or payable, the Company, after learning thereof, will immediately give notice thereof to the Trustee, the Paying Agent and the Exchange Rate Agent (and the Trustee will promptly thereafter give written notice in the manner provided in SECTION 105 to the Holders) specifying the

Conversion Date and the Specified Amount of each Component Currency on the Conversion Date. In the event of any subsequent change in any Component Currency as set forth in the definition of Specified Amount above, the Company, after learning thereof, will similarly give written notice to the Trustee, the Paying Agent and the Exchange Rate Agent. The Trustee and the Paying Agent shall be fully justified and protected in relying and acting upon information received by it from the Company and the Exchange Rate Agent and shall not otherwise have any duty or obligation to determine such information independently.

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SECTION 311. JUDGMENTS.

If for the purpose of obtaining a judgment in any court with respect to any obligation of the Company hereunder or under any Debt Security, it shall become necessary to convert into any other Currency any amount in the Currency due hereunder or under such Debt Security, then such conversion shall be made at the Market Exchange Rate as in effect on the date the Company shall make payment to any Person in satisfaction of such judgment. If pursuant to any such judgment, conversion shall be made on a date other than the date payment is made and there shall occur a change between such Market Exchange Rate and the Market Exchange Rate as in effect on the date of payment, the Company agrees to pay such additional amounts (if any) as may be necessary to ensure that the amount paid is equal to the amount in such other Currency which, when converted at the Market Exchange Rate as in effect on the date of payment or distribution, is the amount then due hereunder or under such Debt Security. Any amount due from the Company under this SECTION 311 shall be due as a separate debt and is not to be affected by or merged into any judgment being obtained for any other sums due hereunder or in respect of any Debt Security. In no event, however, shall the Company be required to pay more in the Currency or Currency unit due hereunder or under such Debt Security at the Market Exchange Rate as in effect when payment is made than the amount of Currency stated to be due hereunder or under such Debt Security so that in any event the Company's obligations hereunder or under such Debt Security will be effectively maintained as obligations in such Currency, and the Company shall be entitled to withhold (or be reimbursed for, as the case may be) any excess of the amount actually realized upon any such conversion over the amount due and payable on the date of payment or distribution.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 401. SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture, with respect to the Debt Securities of any series (if all series issued under this Indenture are not to be affected), shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Debt Securities herein expressly provided for and rights to receive payments of principal (and premium, if any) and interest on such Debt Securities) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

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(1) either

(A) all Debt Securities of such series theretofore authenticated and delivered (other than (i) Debt Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in SECTION 306 and (ii) Debt Securities

of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in SECTION 1103) have been delivered to the Security Registrar for cancellation; or

(B) all Debt Securities of such series not theretofore delivered to the Security Registrar for cancellation,

(i) have become due and payable; or

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

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

and the Company, in the case of (i), (ii) or (iii) of this subclause (B), has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose an amount in the Currency in which such Debt Securities are denominated (except as otherwise provided pursuant to SECTIONS 301 or 310), sufficient to pay and discharge the entire indebtedness on such Debt Securities for principal (and premium, if any) and interest to the date of such deposit (in the case of Debt Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be; provided, however, in the event a petition for relief under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, is filed with respect to the Company within 91 days after the deposit and the Trustee is required to return the deposited money to the Company, the obligations of the Company under this Indenture with respect to such Debt Securities shall not be deemed terminated or discharged;

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

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under SECTION 607, the obligations of the Trustee to any Authenticating Agent

under SECTION 611 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under SECTION 402 and the last paragraph of SECTION 1103 shall survive. If, after the deposit referred to in this SECTION 401 has been made, (x) the Holder of a Debt Security is entitled to, and does, elect pursuant to SECTION 310(B), to receive payment in a Currency other than that in which the deposit pursuant to this SECTION 401 was made, or (y) if a Conversion Event occurs with respect to the Currency in which the deposit was made or elected to be received by the Holder pursuant to SECTION 310(B), then the indebtedness represented by such Debt Security shall be fully discharged to the extent that the deposit made with respect to such Debt Security shall be converted into the Currency in which such payment is made.

SECTION 402. APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of SECTION 1103, all money deposited with the Trustee pursuant to SECTION 401 shall be held in trust and applied by it, in accordance with the provisions of the Debt Securities and this Indenture, to the payment, either directly or through any

Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee.

ARTICLE FIVE

REMEDIES

SECTION 501. EVENTS OF DEFAULT.

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

- (1) default in the payment of any interest upon any Debt Security of such series when it becomes due and payable, and continuance of such default for a period of 30 days; or
- (2) default in the payment of the principal of (or premium, if any, on) any Debt Security of such series at its Maturity; or
- (3) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which expressly has been included in this Indenture solely for the benefit of Debt Securities of a series other than such series), and continuance of such default or breach for a period

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of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 10% in principal amount of the Outstanding Debt Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(4) the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary by a court having jurisdiction in the premises in an involuntary case or proceeding under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or a decree or order adjudging the Company or any Significant Subsidiary bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary under any applicable federal or state law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or of any substantial part of the property of the Company or any Significant Subsidiary, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(5) the commencement by the Company or any Significant Subsidiary of a voluntary case or proceeding under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the entry of an order for relief in an involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or any Significant Subsidiary or of any substantial part of the property of

the Company or any Significant Subsidiary, or the making by the Company or any Significant Subsidiary of an assignment for the benefit of its creditors, or the admission by the Company or any Significant Subsidiary in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action; or

(6) failure to pay at final maturity or upon the declaration of acceleration of payments of indebtedness for borrowed money of the Company or any Significant Subsidiary aggregating in excess of \$5,000,000 (whether such indebtedness now exists or is hereafter created) as a result of the occurrence of one or more events of default as defined in any mortgages, indentures or instruments under which such indebtedness shall have been issued or by which such indebtedness shall have been secured, and such failure to pay shall not be cured or such acceleration or accelerations, as the case may be, shall not be rescinded, annulled or cured, in any such case prior to the expiration of 30 days after the date such failure to pay or acceleration or accelerations shall have occurred; or

(7) any other Event of Default provided with respect to Debt Securities of that series pursuant to SECTION 301.

SECTION 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default with respect to Debt Securities of any series at the time Outstanding (other than an Event of Default specified in Section 501(4) or Section 501(5) with respect to the Company) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of Outstanding Debt Securities of such series may declare the principal amount (or, if any Debt Securities of such series are Discount Securities, such portion of the principal amount of such Discount Securities as may be specified in the terms of such Discount Securities) of all the Debt Securities of such series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount), together with accrued and unpaid interest thereon, shall become immediately due and payable, without presentment, demand, protest, notice of intent to accelerate or other notice of any kind (except as otherwise provided in this Indenture), all of which are hereby waived. If an Event of Default specified in Section 501(4) or Section 501(5) occurs and is continuing with respect to the Company, then the principal amount (or, if any Debt Securities of such series are Discount Securities, such portion of the principal amount of such Discount Securities as may be specified in the terms of such Discount Securities), together with accrued and unpaid interest thereon, of all the Debt Securities of such series shall ipso facto become and be immediately due and payable, without presentment, demand, protest, notice of intent to accelerate or other notice of any kind (except as otherwise provided in this Indenture), all of which are hereby waived, and without any declaration or other act on the part of the Trustee or any Holder. Upon payment of such amount in the Currency in which such Debt Securities are denominated (except as otherwise provided pursuant to SECTIONS 301 or 310), all obligations of the Company in respect of the payment of principal of the Debt Securities of such series shall terminate.

At any time after such a declaration of acceleration with respect to Debt Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Debt Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(1) the Company has paid or deposited with the Trustee a sum in the Currency in which such Debt Securities are denominated (except as otherwise provided pursuant to SECTIONS 301 or 310) sufficient to pay

(A) all overdue installments of interest on all Debt Securities of such series;

(B) the principal of (and premium, if any, on) any Debt Securities of such series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Debt Securities;

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest on each Debt Security at the Overdue Rate; and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; provided, however, that all sums payable under this clause (D) shall be paid in Dollars;

and

(2) all Events of Default with respect to Debt Securities of such series, other than the nonpayment of the principal of Debt Securities of such series which have

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become due solely by such declaration of acceleration, have been cured or waived as provided in SECTION 513.

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

SECTION 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if:

(1) default is made in the payment of any installment of interest on any Debt Security when such interest becomes due and payable and such default continues for a period of 30 days; or

(2) default is made in the payment of principal of (or premium, if any, on) any Debt Security at the Maturity thereof;

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Debt Securities the amount then due and payable on such Debt Securities for the principal (and premium, if any) and interest, if any, and, to the extent that payment of such interest shall be legally enforceable, interest upon the overdue principal (and premium, if any) and upon overdue installments of interest, at the Overdue Rate; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

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

of the exercise of any power granted herein, or to enforce any other proper remedy.

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SECTION 504. TRUSTEE MAY FILE PROOFS OF CLAIM.

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

(i) to file and prove a claim for the whole amount of principal (or, if the Debt Securities of such series are Discount Securities, such portion of the principal amount as may be due and payable with respect to such series pursuant to a declaration in accordance with SECTION 502) (and premium, if any) and interest owing and unpaid in respect of the Debt Securities of such 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 the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of such Debt Securities allowed in such judicial proceeding; and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, custodian, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each such Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to such Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under SECTION 607.

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 Debt Securities of such 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.

SECTION 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF DEBT SECURITIES.

All rights of action and claims under this Indenture or the Debt Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of such Debt Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name, as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation,

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expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Debt Securities in respect of which such judgment has been recovered.

SECTION 506. APPLICATION OF MONEY COLLECTED.

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

FIRST: To the payment of all amounts due the Trustee under SECTION 607;

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

THIRD: The balance, if any, to the Company or as a court of competent jurisdiction may otherwise direct.

In any case where Debt Securities are outstanding which are denominated in more than one Currency, or in a Component Currency, and the Trustee is directed to make ratable payments under this section to Holders of such Debt Securities, the Trustee shall calculate the amount of such payments as follows: (i) as of the date the Trustee collects an amount under this Article, the Trustee shall, as to each Holder of a Debt Security to whom an amount is due and payable under this Section which is denominated in a Foreign Currency or a Component Currency, determine that amount of Dollars that would be obtained for the amount owing such Holder, using the rate of exchange at which in accordance with normal banking procedures the Trustee could purchase in The City of New York Dollars with such amount owing; (ii) calculate the sum of all Dollar amounts determined under (i) and add thereto any amounts due and payable in Dollars; and (iii) using the individual amounts determined in (i) or any individual amounts due and payable in Dollars, as the case may be, as a numerator and the sum calculated in (ii) as a denominator, calculate as to each Holder of a Debt Security to whom an amount is owed under this Section the fraction of the amount collected under this Article payable to such Holder. Any expenses incurred by the Trustee in actually converting amounts owing Holders of Debt Securities denominated in a Currency or a Component Currency other than that in which any amount is collected under this ARTICLE FIVE shall likewise be (in accordance with this paragraph) borne ratably by any Holders of Debt Securities denominated in a Currency or a Component Currency other than that in which any amount is collected under this ARTICLE FIVE.

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SECTION 507. LIMITATION ON SUITS.

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

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to such series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Debt Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Debt Securities of such series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other such Holders or of the Holders of Outstanding Debt Securities of any other series, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders. For the protection and enforcement of the provisions of this SECTION 507, each and every Holder of Debt Securities of any series and the Trustee for such series shall be entitled to such relief as can be given at law or in equity.

SECTION 508. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST.

Notwithstanding any other provision in this Indenture, the Holder of any Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to SECTION 115 and SECTION 307) interest on such Debt Security on the respective Stated Maturity or Maturities expressed in such Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment and interest thereon, and such right shall not be impaired without the consent of such Holder.

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SECTION 509. RESTORATION OF RIGHTS AND REMEDIES.

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

SECTION 510. RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise expressly provided elsewhere in this Indenture, 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 shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right 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 may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 512. CONTROL BY HOLDERS.

Subject to Section 701, the Holders of a majority in principal

amount of the Outstanding Debt Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Debt Securities of such series, provided, that

(1) such direction shall not be in conflict with any rule of law or with this Indenture;

(2) subject to any incorporated provisions, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Responsible Officers of the Trustee, determine that the proceeding so directed would be unjustly prejudicial to the Holders of Debt Securities of such series not joining in any such direction; and

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

SECTION 513. WAIVER OF PAST DEFAULTS.

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

(1) in the payment of any interest upon any Debt Security of such series when it becomes due and payable, or

(2) in the payment of the principal of (or premium, if any, on) any Debt Security of such series at its Maturity; or

(3) in respect of a covenant or provision hereof which pursuant to ARTICLE TEN cannot be modified or amended without the consent of the Holder of each outstanding Debt Security of such series affected.

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

SECTION 514. UNDERTAKING FOR COSTS.

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

SECTION 515. WAIVER OF STAY OR EXTENSION LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force,

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which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SIX

THE TRUSTEE

SECTION 601. CERTAIN DUTIES AND RESPONSIBILITIES.

(a) Except during the continuance of an Event of Default with respect to the Debt Securities of any series,

(1) the Trustee undertakes to perform such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) 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 certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether they conform to the requirements of this Indenture.

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

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

(1) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

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

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

(4) the Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

SECTION 602. NOTICE OF DEFAULTS.

Within 90 days after the occurrence of any default hereunder with respect to Debt Securities of any series the Trustee shall give notice to all Holders of Debt Securities of such series of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Debt Security of such series or in the payment of any sinking fund installment with respect to Debt Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders of Debt Securities of such series; and provided, further, that in the case of any default of the character specified in SECTION 501(3) with respect to Debt Securities of such series no such notice to Holders shall be given until at least 30 days after the default. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Debt Securities of such series.

Notice given pursuant to this SECTION 602 shall be transmitted by mail:

(1) to all Holders, as the names and addresses of the Holders appear in the Security Register; and

(2) to each Holder of a Debt Security of any series whose name and address appear in the information preserved at the time by the Trustee in accordance with the Trust Indenture Act.

SECTION 603. CERTAIN RIGHTS OF TRUSTEE.

Except as otherwise provided in the Trust Indenture Act:

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

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

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

(d) the Trustee may consult with counsel and the advice of such counsel or any opinion of counsel shall be full and complete

authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (including any mathematical calculation contained in any of the foregoing), but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

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

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(h) the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except failure by the Company to pay principal of or interest on any series of Securities so long as the Trustee is also acting as Paying Agent for such series of Securities) unless the Trustee shall be specifically notified in writing of such default by the Company or by the Holders of at least a 10% in aggregate principal amount of all Securities then outstanding, and all such notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal Corporate Trust Office of the Trustee, and in the absence of such notice the Trustee may conclusively assume there is no default except as aforesaid;

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

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

SECTION 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF DEBT SECURITIES.

The recitals contained herein and in the Debt Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities of any series. The Trustee shall not be accountable for the use or application by the Company of any Debt Securities or the proceeds thereof.

SECTION 605. MAY HOLD DEBT SECURITIES.

The Trustee, any Paying Agent, the Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Debt Securities, and, subject to any incorporated provisions, may otherwise deal with the Company with the same rights it would have if it were not the Trustee, Paying Agent, Security Registrar or such other agent.

SECTION 606. MONEY HELD IN TRUST.

Money in any Currency held by the Trustee or any Paying Agent in trust hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 607. COMPENSATION, INDEMNIFICATION AND REIMBURSEMENT.

The Company agrees:

(1) to pay to the Trustee from time to time such compensation in Dollars for all services rendered by it hereunder as shall be agreed upon in writing prior to the performance of such services (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

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

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

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a claim prior to the Debt Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of amounts due on the Debt Securities.

If the Trustee incurs expenses or renders services after an Event of Default specified in Section 501(4) or 501(5) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency, reorganization or other similar law. The obligations of the Company under this SECTION 607 to compensate and indemnify the Trustee for expenses, disbursements and advances shall constitute additional indebtedness under this Indenture and shall survive the satisfaction and discharge of this Indenture.

SECTION 608. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under SECTION 609.

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

(c) The Trustee may be removed at any time with respect to the Debt Securities of any series and a successor Trustee appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt

Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

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

(2) the Trustee shall cease to be eligible under Section 310(a) of the Trust Indenture Act with respect to the Debt Securities of any series and shall fail to resign after written request therefor by the Company or by any such Holder; or

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

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to all Debt Securities, or (ii) subject to SECTION 514, any Holder who has been a bona fide Holder of a Debt Security of any series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee for the Debt Securities of such series;

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Debt Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Debt Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Debt Securities of any particular series) and shall comply with the applicable requirements of SECTION 609. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to the Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Debt Securities of any series shall have been so appointed by the Company or the Holders of such series and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Debt Security of such series for at least six months may, subject to SECTION 514, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Debt Securities of any series and each appointment of a successor Trustee with respect to the Debt Securities of any series in the manner and to the extent provided in SECTION 105 to the Holders of Debt Securities of such series. Each notice shall include the

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name of the successor Trustee with respect to the Debt Securities of such series and the address of its Corporate Trust Office.

(g) If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act with respect to the Debt Securities of any series, it shall either eliminate such conflicting interest or resign with respect to the Debt Securities of that series in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture, and the Company shall take prompt action to have a successor Trustee with respect to the Debt Securities of that series appointed in the manner provided herein.

(h) There shall at all times be a Trustee hereunder with respect to the Debt Securities of each series, which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State authority and having its Corporate Trust Office in Chicago, Illinois or New York, New York. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 609. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

(a) In the case of an appointment hereunder of a successor Trustee with respect to all Debt Securities, each such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in SECTION 607.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Debt Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Debt Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Debt Securities, shall contain such provisions as shall be deemed necessary or

desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in any such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any other trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of any such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further

act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates.

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

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

SECTION 610. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Debt Securities. In case any Debt Securities shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Debt Securities, in either its own name or that of its predecessor Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Trustee.

SECTION 611. APPOINTMENT OF AUTHENTICATING AGENT.

As long as any Debt Securities of a series remain Outstanding, upon a Company Request, there shall be an authenticating agent (the "Authenticating Agent") appointed, for such period as the Company shall elect, by the Trustee for such series of Debt Securities to act as its agent on its behalf and subject to its direction in connection with the authentication and delivery of each series of Debt Securities for which it is serving as Trustee. Debt Securities of each such series authenticated by such Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by such Trustee. Wherever reference is made in this Indenture to the authentication and delivery of Debt Securities of any series by the Trustee for such series or to the Trustee's Certificate of Authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee for such series by an Authenticating Agent for such series and a Certificate of Authentication executed on behalf of such Trustee by such Authenticating Agent. Such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$25,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately

in the manner and with the effect specified in this Section.

Any corporation into which any Authenticating Agent may be merged or converted, or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency business of any Authenticating Agent, shall continue to be the Authenticating Agent (provided that such corporation shall be otherwise eligible under this SECTION 611 to serve as Authenticating Agent) with respect to all series of Debt Securities for which it served as Authenticating Agent without the execution or filing of any paper or any further act on the part of the Trustee for such series or such Authenticating Agent. Any Authenticating Agent may at any time, and if it shall cease to be eligible, shall resign by giving written notice of resignation to the applicable Trustee and to the Company.

Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible in accordance with the provisions of this SECTION 611 with respect to one or more of all series of Debt Securities, the Trustee for such series shall upon Company Request appoint a successor Authenticating Agent, and the Company shall provide notice of such appointment to all Holders of Debt Securities of such series in the manner and to the extent provided in SECTION 105. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers,

duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent herein. The Trustee for the Debt Securities of such series agrees to pay to the Authenticating Agent for such series from time to time reasonable compensation for its services, and the Trustee shall be entitled to be reimbursed for such payment, subject to the provisions of SECTION 607. The Authenticating Agent for the Debt Securities of any series shall have no responsibility or liability for any action taken by it as such at the direction of the Trustee for such series.

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

This is one of the series of Debt Securities issued under the within mentioned Indenture.

TEXAS COMMERCE BANK NATIONAL
ASSOCIATION, as Trustee

By _____
As Authenticating Agent

By _____
Authorized Signatory

SECTION 612. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

If and when the Trustee becomes a creditor of the Company (or any other obligor upon the Debt Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor). A Trustee that has resigned or been removed is subject to such provisions of the Trust Indenture Act to the extent provided therein.

ARTICLE SEVEN

CONCERNING THE HOLDERS

SECTION 701. ACTS OF HOLDERS; RECORD DATES.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and

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evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or proxy duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Outstanding Debt Securities of any series may take any Act, the fact that the Holders of such specified percentage have joined therein may be evidenced (a) by the instrument or instruments executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of Holders voting in favor thereof at any meeting of such Holders duly called and held in accordance with the provisions of ARTICLE EIGHT, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders.

(b) For purposes of any provision of the Indenture where the Holders of Outstanding Debt Securities may perform an Act that requires that a specified percentage of the Outstanding Debt Securities of all series perform such Act and for purposes of any decision or determination by the Trustee and the Paying Agent of amounts due and unpaid for the principal of (and premium, if any) and interest on the Debt Securities of all series in respect of which moneys are to be disbursed ratably, the principal of (and premium, if any) and interest on the Outstanding Debt Securities denominated in Foreign Currency will be the amount in Dollars based upon the Market Exchange Rate for Debt Securities of such series, as of the date for determining whether the Holders entitled to perform such Act have performed it, or as of the date of such decision or determination by the Trustee, as the case may be.

(c) Except as provided in the next paragraph of this subsection (c), the Company may set any day as the record date for the purpose of determining the Holders entitled to perform any act, or to vote on any action, authorized or permitted to be given or taken by Holders. With regard to any record date set pursuant to this subsection (c), the Holders of Outstanding Debt Securities of the relevant series on such record date (or their duly appointed agents), and only such Persons, shall be entitled to give or take the relevant action, whether or not such Holders remain Holders after such record date. Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Outstanding Debt Securities of any series (or their duly appointed agents) may take any Act and for which a record date is set pursuant to this subsection (c), the Company may, at its option, set an expiration date after which no such Act purported to be given or taken by any Holder shall be effective hereunder unless given or taken on or prior to such expiration date by Holders of the requisite principal amount of Outstanding Debt Securities of such series on such record date (or their duly appointed agents), which expiration date shall be at least 30 days after notice thereof is given in writing to the Trustee and the Holders. On or prior to any expiration date set pursuant to this subsection (c), the Company may extend such date to any later date by providing written notice of such extension to the Trustee and the Holders.

Notwithstanding the foregoing, upon receipt by the Trustee, with respect to Securities of any series, of (i) any notice of the occurrence of Event of Default pursuant to Section 501(3), (ii) any declaration of acceleration, or any rescission and annulment of any such declaration pursuant to Section 502, or (iii) any direction given pursuant to Section 512 (any of the foregoing being referred to herein as a "Direction"), a record date shall automatically and without any other action by any Person be set for the purpose of determining the Holders of the Outstanding Debt Securities of such series entitled to join in such Direction, which record date shall be the close of business on the day the Trustee receives such Direction. The Holders of the

Outstanding Debt Securities of such series on such record date (or their duly appointed agents), and only such Persons, shall be entitled to join in such Direction, whether or not such Holders remain Holders after such record date; provided that, unless such Direction shall have become effective by virtue of Holders of the specified percentage in aggregate principal amount of the Outstanding Debt Securities of such series on such record date (or their duly appointed agents) having joined therein on or prior to the 90th day after such record date, such Direction shall automatically and without any action by any Person be cancelled and be of no further effect. Nothing in this paragraph shall prevent a Holder (or a duly appointed agent thereof) from giving, before or after the expiration of such 90-day period, a Direction contrary to or different from, or, after the expiration of such period, identical to, a Direction that has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date in respect thereof shall be set pursuant to this subsection (c).

SECTION 702. PROOF OF OWNERSHIP; PROOF OF EXECUTION OF INSTRUMENTS BY HOLDERS.

The ownership of Debt Securities of any series shall be proved by the Security Register for such series or by a certificate of the Security Registrar for such series.

Subject to the provisions of SECTION 603 and 805, proof of the execution of a writing appointing an agent or proxy and of the execution of any instrument by a Holder or his agent or proxy shall be sufficient and conclusive in favor of the Trustee and the Company if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer authorized to take acknowledgement of deeds, that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, as the case may be, or by any other person acting in a representative capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

The record of any Holders' meeting shall be proved in the manner provided in SECTION 806.

The Trustee may in any instance require further proof with respect to any of the matters referred to in this Section so long as the request is a reasonable one.

SECTION 703. PERSONS DEEMED OWNERS.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Debt Security is registered as the owner of such Debt Security for the purpose of receiving payment of the principal of (and premium, if any) and (subject to SECTION 307) interest, if any, on such Debt Security and for all other purposes

whatsoever, whether or not such Debt Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. All payments made to any Holder, or upon his order, shall be valid, and, to the extent of the sum or sums paid, effectual to satisfy and discharge the liability for moneys payable upon such Debt Security.

SECTION 704. REVOCATION OF CONSENTS; FUTURE HOLDERS BOUND.

At any time prior to (but not after) the evidencing to the Trustee, as provided in SECTION 701, of the taking of any Act by the Holders of the percentage in aggregate principal amount of the Outstanding Debt Securities specified in this Indenture in connection with such Act, any Holder of a Debt Security the number, letter or other distinguishing symbol of which is shown by

the evidence to be included in the Debt Securities the Holders of which have consented to such Act may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of ownership as provided in SECTION 702, revoke such Act so far as it concerns such Debt Security. Except as aforesaid, any such Act taken by the Holder of any Debt Security shall be conclusive and binding upon such Holder and upon all future Holders of such Debt Security and of any Debt Securities issued on transfer or in lieu thereof or in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Debt Security or such other Debt Securities.

ARTICLE EIGHT

HOLDERS' MEETINGS

SECTION 801. PURPOSES OF MEETINGS.

A meeting of Holders of any or all series may be called at any time and from time to time pursuant to the provisions of this ARTICLE EIGHT for any of the following purposes:

(1) to give any notice to the Company or to the Trustee for any series of Debt Securities or to give any directions to the Trustee for such series, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of ARTICLE FIVE;

(2) to remove the Trustee for such series and appoint a successor Trustee pursuant to the provisions of ARTICLE SIX;

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of SECTION 1002; or

(4) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Outstanding Debt Securities

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of any one or more or all series, as the case may be, under any other provision of this Indenture or under applicable law.

SECTION 802. CALL OF MEETINGS BY TRUSTEE.

The Trustee for any series may at any time call a meeting of Holders of such series to take any action specified in SECTION 801, to be held at such time or times and at such place or places as the Trustee for such series shall determine. Notice of every meeting of the Holders of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of such series in the manner and to the extent provided in SECTION 105. Such notice shall be given not less than 20 days nor more than 90 days prior to the date fixed for the meeting.

SECTION 803. CALL OF MEETINGS BY COMPANY OR HOLDERS.

In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Outstanding Debt Securities of a series or of all series, as the case may be, shall have requested the Trustee for such series to call a meeting of Holders of any or all such series by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 20 days after the receipt of such request, then the Company or such Holders may determine the time or times and the place or places for such meetings and may call such meetings to take any action authorized in SECTION 801, by giving notice thereof as provided in SECTION 802.

SECTION 804. QUALIFICATIONS FOR VOTING.

To be entitled to vote at any meeting of Holders a Person shall be (a) a Holder of a Debt Security of the series with respect to which such meeting is being held or (b) a Person appointed by an instrument in writing as agent or proxy by such Holder. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee for the series with respect to which such meeting is being held and its counsel and any representatives of the Company and its counsel.

SECTION 805. REGULATIONS.

Notwithstanding any other provisions of this Indenture, the Trustee for any series may make such reasonable regulations as it may deem advisable for any meeting of Holders of such series, in regard to proof of the holding of Debt Securities of such series and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

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The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of such series as provided in SECTION 803, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by a majority vote of the meeting.

Subject to the provisos in the definition of "Outstanding," at any meeting each Holder of a Debt Security of the series with respect to which such meeting is being held or proxy therefor shall be entitled to one vote for each \$1,000 principal amount (or such other amount as shall be specified as contemplated by SECTION 301) of Debt Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Debt Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Outstanding Debt Securities of such series held by him or instruments in writing duly designating him as the person to vote on behalf of Holders of Debt Securities of such series. Any meeting of Holders with respect to which a meeting was duly called pursuant to the provisions of SECTION 802 or 803 may be adjourned from time to time by a majority of such Holders present and the meeting may be held as so adjourned without further notice.

SECTION 806. VOTING.

The vote upon any resolution submitted to any meeting of Holders with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such Holders or of their representatives by proxy and the serial number or numbers of the Debt Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was transmitted as provided in SECTION 802. The record shall show the serial numbers of the Debt Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

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

SECTION 807. NO DELAY OF RIGHTS BY MEETING.

Nothing contained in this ARTICLE EIGHT shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly

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conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to any Holder under any of the provisions of this Indenture or of the Debt Securities of any series.

SECTION 808. QUORUM: ACTION.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of a series shall constitute a quorum for a meeting of Holders of Debt Securities of such series, provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of a specified percentage, which is greater than a majority in aggregate principal amount of the Outstanding Debt Securities of a series, the Persons entitled to vote such specified percentage in aggregate principal amount of the Outstanding Debt Securities of such series, shall constitute a quorum.

ARTICLE NINE

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 901. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety (the "successor corporation") shall be a corporation organized and existing under the laws of the United States of America or any state or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Debt Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

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

(3) if, as a result of any such consolidation or merger or such conveyance, transfer or lease, properties or assets of the Company would become subject to a mortgage, pledge, lien, security interest or other encumbrance that would not be permitted by this Indenture, the Company or such successor Person, as the case may be,

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shall take such steps as shall be necessary effectively to secure all Debt Securities equally and ratably with (or prior to) all indebtedness secured thereby; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this ARTICLE NINE, that all conditions precedent herein provided for relating to such transaction have been complied with and that the execution and delivery of such supplemental indenture has been duly authorized by all necessary corporate action of the successor Person, such supplemental indenture has been duly executed and delivered by the successor Person and, assuming due authorization, execution and delivery by the Trustee, is a valid and binding obligation enforceable against the successor Person in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

SECTION 902. SUCCESSOR CORPORATION SUBSTITUTED.

Upon any consolidation with or merger into any other Person, or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with SECTION 901, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Debt Securities.

ARTICLE TEN

SUPPLEMENTAL INDENTURES

SECTION 1001. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

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

(1) to evidence the succession of another corporation to the Company and the assumption by such successor of the covenants of the Company herein and in the Debt Securities contained; or

(2) to add to the covenants of the Company, for the benefit of the Holders of all or any series of Debt Securities appertaining thereto (and if such covenants are to be

for the benefit of less than all series, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default (and if such Events of Default are to be applicable to less than all series, specifying the series to which such Events of Default are applicable and stating that such Events of Default are expressly being included solely to be applicable to such series); or

(4) to add to, change or eliminate any of the provisions of this Indenture, provided that any such addition, change or elimination shall become effective only when there is no Outstanding

Debt Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision and as to which such supplemental indenture would apply; or

(5) to secure the Debt Securities; or

(6) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Debt Securities pursuant to ARTICLE FOUR OR ARTICLE THIRTEEN provided that any such action shall not adversely affect the interests of the Holders of Debt Securities of such series or any other series of Debt Securities in any material respect; or

(7) to establish the form or terms of Debt Securities of any series as permitted by SECTIONS 201 and 301; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to one or more series of Debt Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of SECTION 609; or

(9) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with any provision of this Indenture, provided such other provisions shall not adversely affect the interests of the Holders of Outstanding Debt Securities of any series created prior to the execution of such supplemental indenture in any material respect; or

(10) to change any place or places where (1) the principal of and premium, if any, and interest, if any, on all or any series of Debt Securities shall be payable, (2) all or any series of Debt Securities may be surrendered for registration or transfer, (3) all or any series of Debt Securities may be surrendered for exchange, and (4) notices and

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demands to or upon the Company in respect of all or any series of Debt Securities and this Indenture may be served; or.

(11) to change any provision of this Indenture relating to payments in Foreign Currencies or Currency units to facilitate the making of such payments; provided that any such action shall not adversely affect the interests of the Holders of Debt Securities of such series or any other series of Debt Securities in any material respect.

SECTION 1002. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Debt Securities of each series affected by such supplemental indenture voting separately, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture of such Debt Securities; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Debt Security of each such series affected thereby,

(1) change the Stated Maturity of the principal of, or installment of interest, if any, on, any Debt Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon redemption thereof, or change the Currency or Currencies

in which the principal of (and premium, if any) or interest on such Debt Security is denominated or payable, or reduce the amount of the principal of a Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to SECTION 502, or adversely affect the right of repayment or repurchase, if any, at the option of the Holder, or impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or

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

(3) modify any of the provisions of this Section, SECTION 513 or SECTION 1105, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Debt Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and SECTION 1105, or the

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deletion of this proviso, in accordance with the requirements of SECTIONS 609 and 1001(7).

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

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture with respect to one or more particular series of Debt Securities or which modifies the rights of the Holders of Debt Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Debt Securities of any other series.

SECTION 1003. EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to any incorporated provisions) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that the execution and delivery of such supplemental indenture has been duly authorized by all necessary corporate action of the Company, such supplemental indenture has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the Trustee, is a valid and binding obligation enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise in a material way.

SECTION 1004. EFFECT OF SUPPLEMENTAL INDENTURES.

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

SECTION 1005. CONFORMITY WITH TRUST INDENTURE ACT.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

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SECTION 1006. REFERENCE IN DEBT SECURITIES TO SUPPLEMENTAL INDENTURES.

Debt Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Company or the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debt Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debt Securities of such series.

SECTION 1007. NOTICE OF SUPPLEMENTAL INDENTURE.

Promptly after the execution by the Company and the appropriate Trustee of any supplemental indenture pursuant to SECTION 1002, the Company shall transmit, in the manner and to the extent provided in SECTION 105, to all Holders of any series of the Debt Securities affected thereby, a notice setting forth in general terms the substance of such supplemental indenture.

ARTICLE ELEVEN

COVENANTS

SECTION 1101. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees for the benefit of each series of Debt Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Debt Securities in accordance with the terms of the Debt Securities and this Indenture.

SECTION 1102. MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for each series of Debt Securities an office or agency where Debt Securities of that series may be presented or surrendered for payment, where Debt Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Debt Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all presentations, surrenders, notices and demands.

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SECTION 1103. MONEY FOR DEBT SECURITIES; PAYMENTS TO BE HELD IN TRUST.

If the Company shall at any time act as its own Paying Agent with respect to any series of Debt Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Debt Securities of such series, segregate and hold in trust for the benefit of the

Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

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

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

- (1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Debt Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;
- (2) give the Trustee notice of any default by the Company (or any other obligor upon the Debt Securities of such series) in the making of any payment of principal (and premium, if any) or interest on the Debt Securities of such series; and
- (3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any

Debt Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company upon Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Debt Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be transmitted in the manner and to the extent provided by SECTION 105, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 1104. CORPORATE EXISTENCE.

Subject to ARTICLE NINE, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or

franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

SECTION 1105. OFFICERS' CERTIFICATE AS TO DEFAULT.

The Company will deliver to the Trustee, on or before a date not more than four months after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observation of any of the terms, provisions and conditions of this Indenture, and, if the Company shall be in default, specifying all such defaults and the nature thereof of which they may have knowledge.

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ARTICLE TWELVE

REDEMPTION OF DEBT SECURITIES

SECTION 1201. APPLICABILITY OF ARTICLE.

Debt Securities of any series that are redeemable before their Maturity shall be redeemable in accordance with their terms and (except as otherwise specified pursuant to SECTION 301 for Debt Securities of any series) in accordance with this Article.

SECTION 1202. ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Debt Securities shall be evidenced by a Board Resolution. The Company shall, at least 60 days prior the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee: (a) of such Redemption Date and of the principal amount of Debt Securities of such series to be redeemed; (b) the Redemption Price; (c) the Place or Places of Payment where the Debt Securities are to be surrendered for the payment of the Redemption Price; and (d) that payment will be made by the Paying Agent (if the Trustee is not the Paying Agent) upon presentation and surrender of such Debt Securities. In the case of any redemption of Debt Securities prior to the expiration of any restriction on such redemption provided in the terms of such Debt Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with such restrictions.

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SECTION 1203. SELECTION BY TRUSTEE OF DEBT SECURITIES TO BE REDEEMED.

If less than all the Debt Securities of any series are to be redeemed at the election of the Company, the particular Debt Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Debt Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Debt Securities of such series. The portions of the principal amount of Debt Securities so selected for partial redemption shall be equal to the minimum authorized denominations for Debt Securities of such series pursuant to SECTION 302 in the Currency in which the Debt Securities of such series are denominated or any integral multiple

thereof, except as otherwise set forth in the applicable form of Debt Securities. In any case where more than one Debt Security of such series is registered in the same name, the Trustee in its discretion may treat the aggregate principal amount so registered as if it were represented by one Debt Security of such series.

In the case of any Debt Securities selected for partial redemption, the Trustee shall promptly notify the Company in writing of the Debt Securities selected for redemption and the principal amount thereof to be redeemed.

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

SECTION 1204. NOTICE OF REDEMPTION.

Notice of redemption 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, not less than 30 days and not more than 60 days prior to the Redemption Date to the Holders of Debt Securities of any series to be redeemed in whole or in part pursuant to this ARTICLE TWELVE, in the manner provided in SECTION 105. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. Failure to give such notice, or any defect in such notice to the Holder of any Debt Security of a series designated for redemption, in whole or in part, shall not affect the sufficiency of any notice of redemption with respect to the Holder of any other Debt Security of such series.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,

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(3) that Debt Securities of such series are being redeemed by the Company pursuant to provisions contained in this Indenture or the terms of the Debt Securities of such series or a supplemental indenture establishing such series, if such be the case, together with a brief statement of the facts permitting such redemption,

(4) if less than all Outstanding Debt Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Debt Securities to be redeemed,

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

(6) the Place or Places of Payment where such Debt Securities are to be surrendered for payment of the Redemption Price.

SECTION 1205. DEPOSIT OF REDEMPTION PRICE.

On or prior to the Redemption Date for any Debt Securities, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in SECTION 1103) an amount of money in the Currency or Currencies in which such Debt Securities are denominated (except as provided pursuant to SECTIONS 301 or 310) sufficient to pay the Redemption Price of such Debt Securities or any portions thereof that are to be redeemed on that date.

SECTION 1206. DEBT SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, any Debt Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price in the Currency in which the Debt Securities of such series are payable (except as otherwise specified pursuant to SECTIONS 301 or 310), and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Debt Securities shall cease to bear interest. Upon surrender of any such Debt Security for redemption in accordance with said notice, such Debt Security shall be paid by the Company at the Redemption Price; provided, however, that, unless otherwise specified as contemplated by SECTION 301, installments of interest on Debt Securities that have a Stated Maturity on or prior to the Redemption Date for such Debt Securities shall be payable according to the terms of such Debt Securities and the provisions of SECTION 307.

If any Debt Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Debt Security.

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SECTION 1207. DEBT SECURITIES REDEEMED IN PART.

Any Debt Security that is to be redeemed only in part shall be surrendered at the Corporate Trust Office or such other office or agency of the Company as is specified pursuant to SECTION 301 with, if the Company, the Security Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company, the Security Registrar or the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing, and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Debt Security without service charge, a new Debt Security or Debt Securities of the same series, of like tenor and form, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Debt Security so surrendered. In the case of a Global Note providing appropriate space for such notation, at the option of the Holder thereof, the Security Registrar, in lieu of delivering a new Global Note or Global Notes as aforesaid, may make a notation on such Debt Security of the payment of the redeemed portion thereof.

ARTICLE THIRTEEN

DEFEASANCE

SECTION 1301. APPLICABILITY OF ARTICLE.

If, pursuant to SECTION 301, provision is made for the defeasance of Debt Securities of a series, and if the Debt Securities of such series are denominated and payable only in Dollars then the provisions of this Article shall be applicable. Defeasance provisions, if any, for Debt Securities denominated in a Foreign Currency or Currencies may be specified pursuant to SECTION 301.

SECTION 1302. DEFESANCE UPON DEPOSIT OF MONEYS OR U.S. GOVERNMENT OBLIGATIONS.

At the Company's option, either (a) the Company shall be deemed to have been Discharged (as defined below) from its obligations with respect to Debt Securities of any series on the 91st day after the applicable conditions set forth below have been satisfied or (b) the Company shall cease to be under any obligation to comply with any term, provision or condition set forth in SECTION 901 with respect to Outstanding Debt Securities of any series (and, if so specified pursuant to SECTION 301, any other restrictive covenant added for the benefit of such series pursuant to SECTION 301) at any time after the applicable conditions set forth below have been satisfied:

(1) the Company shall have deposited or caused to be deposited irrevocably with the Trustee as trust funds in trust,

specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Outstanding Debt Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations (as defined below) which

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through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal (including any mandatory sinking fund payments) of and premium, if any, and interest on, the Outstanding Debt Securities of such series on the dates such installments of interest or principal and premium are due;

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) if the Debt Securities of such series are then listed on any national securities exchange, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Company's exercise of its option under this Section would not cause such Debt Securities to be delisted;

(4) an Officer's Certificate shall have been delivered to the Trustee stating that no Event of Default or event (including such deposit) which, with notice or lapse of time or both, would become an Event of Default with respect to the Debt Securities of such series shall have occurred and be continuing on the date of such deposit and the Company shall have delivered an Officers Certificate to the Trustee on the 91st day after the date of such deposit stating that no Event of Default under SECTION 501(4) or SECTION 501(5) or event which with the giving of notice or lapse of time, or both, would become an Event of Default under SECTION 501(4) or SECTION 501(5) shall have occurred and be continuing on the 91st day after such date; and

(5) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the Debt Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance or Discharge.

"Discharged" means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by, and obligations under, the Debt Securities of such series and to have satisfied all the obligations under this Indenture relating to the Debt Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except (A) the rights of Holders of Debt Securities of such series to receive, from the trust fund described in clause (1) above, payment of the principal of (and premium, if any) and interest on such Debt Securities when such payments are due, (B) the Company's obligations with respect to the Debt Securities of such series under SECTIONS 304, 305, 306, 1103 and 1303 and with respect to the Trustee under SECTION 607 and (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder including those pursuant to SECTION 607 hereof.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality

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of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case under clauses (i) or (ii), are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

SECTION 1303. DEPOSIT MONEYS AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST.

All moneys and U.S. Government Obligations deposited with the Trustee pursuant to SECTION 1302 in respect of Debt Securities of a series shall be held in trust and applied by it, in accordance with the provisions of such Debt Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Debt Securities, of all sums due and to become due thereon for principal (and premium, if any) and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

SECTION 1304. REPAYMENT TO COMPANY.

The Trustee and any Paying Agent shall promptly pay or return to the Company upon Company Request any moneys or U.S. Government Obligations held by them at any time that are not required for the payment of the principal of (and premium, if any) and interest on the Debt Securities of any series for which money or U.S. Government Obligations have been deposited pursuant to SECTION 1302, provided that the Trustee may, at its option, request a written certification of a nationally recognized firm of independent public accountants certifying what amount, if any, of moneys or U.S. Government Obligations deposited pursuant to Section 1302 is not required for the payment of the principal of (and premium, if any) and interest on the Debt Securities of any series.

The provisions of the last paragraph of SECTION 1103 shall apply to any money held by the Trustee or any Paying Agent under this Article that remains unclaimed for two years after the Maturity of any series of Debt Securities for which money or U.S. Government Obligations have been deposited pursuant to SECTION 1302.

SECTION 1305. REINSTATEMENT.

If the Trustee is unable to apply any money in accordance with this ARTICLE THIRTEEN 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 Debt Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to this ARTICLE THIRTEEN until such time as the Trustee is permitted to apply all such money in accordance with this ARTICLE THIRTEEN; provided, however, that if the Company has made any payment of interest on or principal of (and premium, if any, on), any Debt Securities of such series because of the

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reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such series of Debt Securities to receive such payment from the money held by the Trustee.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

KIRBY CORPORATION

By: _____
Print Name: _____
Title: _____

TEXAS COMMERCE BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Print Name: _____
Title: _____

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STATE OF)
) ss:
COUNTY OF)

On the ____ day of December, 1994, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he is _____ of Kirby Corporation, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

Notary Public

SEAL

STATE OF)
) ss:
COUNTY OF)

On the ____ day of December, 1994, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she is _____ of Texas Commerce Bank National Association one of the entities described in and which executed the foregoing instrument; that he knows the seal of said corporation;

that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said association, and that he signed his name thereto by like authority.

Notary Public

SEAL

December 1, 1994

Kirby Corporation
1775 St. James Place
Suite 300
Houston, Texas 77056

Re: Offering of Debt Securities of Kirby Corporation

Gentlemen:

On October 27, 1994, Kirby Corporation, a Nevada corporation (the "Company"), filed with the Securities and Exchange Commission a Registration Statement on Form S-3 (Registration No. 33-56195) (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"). Such Registration Statement relates to the proposed issuance from time to time of up to an aggregate of \$250,000,000 principal amount of debentures, notes and/or other unsecured evidences of indebtedness of the Company (the "Debt Securities"). The Debt Securities shall be issued from time to time pursuant to an Indenture (the "Indenture") to be entered into between the Company and Texas Commerce Bank National Association, as Trustee (the "Trustee"). We have acted as counsel to the Company in connection with the preparation and filing of the Registration Statement and the issuance and sale of the Debt Securities.

In connection therewith, we have examined and relied upon the original or copies, certified to our satisfaction, of (i) the Restated Articles of Incorporation and the Bylaws of the Company, each as amended, (ii) copies of resolutions of the Board of Directors of the Company authorizing the offering and the issuance of the Debt Securities to be sold by the Company and related matters, (iii) the Registration Statement, and all exhibits thereto, (iv) the Indenture, and (v) such other documents and instruments as we have deemed necessary for the expression of the opinions herein contained. In making the foregoing examinations, we have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as certified or photostatic copies. As to various questions of fact material to this opinion, we have relied, to the extent we deem reasonably appropriate, upon representations or certificates of officers or directors of the Company and upon documents, records and instruments furnished to us by the Company, without independent check or verification of their accuracy.

Based upon the foregoing examination, we are of the opinion that when all necessary proceedings have been taken by the Board of Directors or the authorized officers of the Company in connection with the authorization, issuance and sale of the Debt Securities of a particular series and related matters, the Debt Securities of such series, when duly executed on behalf of the Company and authenticated by the Trustee and issued and delivered pursuant to the Indenture against payment to the Company of the authorized consideration therefor, will be duly

Kirby Corporation
November 14, 1994
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authorized and validly issued and will be binding obligations of the Company in accordance with their terms, subject to the extent that rights to indemnification thereunder may be limited by federal or state securities laws and policies embodied therein or to the extent that such obligations are subject to or affected or limited by (i) applicable liquidation, conservatorship, bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting creditors' rights or the collection of debtors' obligations generally from time to time in effect or (ii) general principles of equity (whether enforceability is considered in a proceeding in

equity or at law), including the qualification that the availability of the remedies of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any such proceeding therefor may be brought and including standards of good faith, fair dealing and reasonableness that may be applied by a court to the exercise of certain rights and remedies. Further, we express no opinion as to the following: (i) whether a court would grant any remedy sought with respect to immaterial breaches or to the extent any purchaser has acted in bad faith in exercising remedies; or (ii) whether a court would grant a particular remedy provided for in the Debt Securities or the Indenture as opposed to another remedy provided for therein or at law or in equity. With respect to matters governed by New York law, we have relied on the opinion of Andrews & Kurth L.L.P. to the Company, dated as of the date hereof, a copy of which is attached.

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 forming part of the Registration Statement. In giving such consent, we do not admit that we come within the category of persons whose consent is required by Section 7 of the Act or the rules and regulations of the Commission thereunder.

We advise you that Henry Gilchrist, who is the Secretary and an Advisory Director of the Company, is a shareholder of this firm.

Very truly yours,

JENKENS & GILCHRIST,
a Professional Corporation

By: /S/ HENRY GILCHRIST

Henry Gilchrist

HG:GWC:kb

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December 1, 1994

Kirby Corporation
1775 St. James Place
Suite 300
Houston, Texas 77056

Gentlemen:

We have acted as counsel to Merrill Lynch, Pierce, Fenner & Smith Incorporated, Salomon Brothers Inc and Wertheim Schroder & Co. Incorporated in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, of the registration statement on Form S-3 (No. 33-56195) filed by Kirby Corporation, a Nevada corporation (the "Company") with the Commission (such registration statement being hereinafter referred to as the "Registration Statement") relating to the offering from time to time of the Company's unsecured debt securities (the "Debt Securities") having an aggregate initial public offering or purchase price of up to U.S. \$250,000,000 or the equivalent thereof in one or more other currencies, including composite currencies as set forth in the Registration Statement. The Debt Securities are to be issued in one or more series in accordance with the provisions of the indenture (the "Indenture") to be entered into between the Company and Texas Commerce Bank National Association, as trustee (the "Trustee").

In arriving at the opinions expressed below, we have examined the Registration Statement, the form of Indenture filed as Exhibit 4.3 to the Registration Statement and the original or copies certified or otherwise identified to our satisfaction of such other instruments and other certificates

of public officials, officers and representatives of the Company and such other persons, and we have made such investigations of law, as we have deemed appropriate as a basis for the opinions expressed below. In rendering the opinions expressed below, we have with your permission and without independent investigation:

(a) assumed that (i) the Company is a corporation validly existing and in good standing under the laws of the State of Nevada and the Trustee is a national banking association validly existing and in good standing under the laws of the United States of America, (ii) the Indenture has been duly authorized, executed and delivered by each of the Company and the Trustee, (iii) the Indenture constitutes a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, (iv) no approval, authorization or other action by, or (except as covered by our assumptions in clauses (i), (ii) or (iii) of clause (e) below) registration, filing or declaration with, any governmental authority, court or arbitrator, is or will be required in connection with the execution, delivery or performance by the Company or the Trustee of the Indenture or any Debt Securities, (v) neither the execution, delivery and performance by the Company of the Indenture and the Debt Securities of each future series, nor the offer, issue, sale and delivery of any such Debt Securities, will violate any provision of the charter or bylaws of the Company, or any other legal requirement now or hereafter in effect binding upon or affecting the Company or its operations or properties in such manner as to affect adversely the validity or enforceability of the Indenture or such Debt Securities and (vi) the execution, delivery and performance by the Trustee of the Indenture will not violate any legal requirement now or hereafter in effect binding upon or affecting the Trustee on its operations or properties in such manner as to affect adversely the validity or enforceability of the Indenture;

(b) assumed (i) that the signatures on all documents that we have examined are genuine, (ii) the conformity to the originals of all documents supplied to us as certified or photostatic or faxed copies, and (iii) the authenticity of the originals of such documents;

(c) assumed that (i) all documents in respect of which forms were filed with the Commission as exhibits to the Registration Statement will conform in all material respects to the forms thereof that we have examined and (ii) all Debt Securities to be issued by the Company will be in substantially the form of the drafts submitted to us by the Company, with all blanks duly completed and with such additions, deletions and modifications as are required to comply with applicable law and the terms of the Indenture and to reflect the terms of the particular series of Debt Securities and;

(d) assumed that (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective, (ii) a Prospectus Supplement will have been prepared and filed with the Commission describing the Securities offered thereby, (iii) all Securities will be issued and sold in compliance with the applicable federal and state securities laws and in the manner stated in the Registration Statement and the appropriate Prospectus Supplement and (iv) the applicable distribution, underwriting or similar agreement pursuant to which such Debt Securities are to be sold has been duly authorized, executed and delivered by each underwriter, dealer or other party thereto.

Based on the foregoing, and subject to the limitations and exceptions set forth below, it is our opinion that:

1. The Indenture is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject to applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfer), reorganization, moratorium and similar laws affecting creditors' rights generally, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and to possible judicial action giving effect to governmental actions or foreign laws affecting creditors' rights.

2. When (i) the issuance, execution and delivery by the Company of the Debt Securities of a series have been duly authorized by all necessary corporate action of the Company in accordance with applicable law and the

provisions of the Indenture, (ii) such Debt Securities have been duly authenticated by the

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December 1, 1994
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Trustee in accordance with applicable law and the provisions of the Indenture and (iii) the applicable distribution, underwriting or similar agreement pursuant to which such Debt Securities are to be sold has been duly authorized, executed and delivered by the Company under the laws of the State of Nevada and such Debt Securities are executed and delivered by the Company and issued in accordance with the provisions of such agreement upon payment or delivery of the consideration specified therein for such Debt Securities, such Debt Securities will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, entitled to the benefits of the Indenture, subject to applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfer, reorganization, moratorium and similar laws effecting creditors rights generally, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and to possible judicial action giving effect to governmental actions or foreign laws affecting creditors' rights.

With respect to our opinions expressed in paragraph (2) above as they relate to Debt Securities denominated in a currency other than the U.S. dollars, we note that effective enforcement of a foreign currency claim in the New York State courts or the federal courts sitting in the State of New York may be limited by requirements that the claim (or a foreign currency judgment in respect of such claim) be converted into U.S. dollars at the rate of exchange prevailing on a specified date. We express no opinion as to whether a federal court sitting in the State of New York would award a judgment in a currency other than U.S. dollars. Additionally, with respect to our opinions expressed in paragraph (2), we have assumed that any Indexed Note (as such term is defined in the Prospectus Supplement referred to above) will comply with the United States Commodity Exchange Act of 1922, as amended, and the rules, regulations and orders of the Commodity Futures Trading Commission promulgated thereunder and with any applicable provisions of state law.

We express no opinion other than as to the law of the State of New York.

This opinion is being furnished to Kirby Corporation in connection with the opinion to be rendered by Jenkins & Gilchrist, a Professional Corporation to the Company and filed with the Commission as Exhibit 5.1 to the Registration Statement. This opinion speaks as of its date, and we undertake no duty to advise you as to changes in fact or law coming to our attention after the date hereof. This opinion may not be used, quoted, published, circulated or relied upon by any person for any purposes without our prior written consent except that Jenkins & Gilchrist, a

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Kirby Corporation
December 1, 1994
Page 3

Professional Corporation, may rely on this opinion as if it were addressed to it for purposes of rendering its opinion to be filed as Exhibit 5.1 to the Registration Statement. In this regard, we do not admit that we are "experts" under the Securities Act of 1933, as amended, or the rules and regulations of the Commission issued thereunder, with respect to any part of the Registration

Statement, including such opinion of Jenkins & Gilchrist, a Professional Corporation.

Very truly yours,

ANDREWS & KURTH L.L.P.

1210/2281